HOUSE OF REPRESENTATIVES—*Wednesday, July 17, 1991*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Teach us, O God, to understand that the opportunities and responsibilities of daily living are a gift that is to be celebrated today and in all the days that may be ours. We admit how easily we keep hold on what is past and we repeat in our minds the failures and the sins of other days. Grant to us, O loving God, the grace to let go of the delinquencies of other times. Fill our hearts with wisdom and permeate our lives with joy for the new day before us that we will be the people You would have us be and do those good things that honor You and do justice for all people. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Illinois [Mr. EVANS] please come forward and lead the House in the Pledge of Allegiance.

Mr. EVANS led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 153. An act to amend title 38, United States Code, to make miscellaneous administrative and technical improvements in the operation of the United States Court of Veterans Appeals, and for other purposes.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 985. An act to assure the people of the Horn of Africa the right to food and the other basic necessities of life and to promote peace and development in the region.

IN SUPPORT OF H.R. 5

(Mr. RUSSO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUSSO. Mr. Speaker, I rise today in strong support of H.R. 5, legislation which will restore the balance between labor and management in the collective bargaining process. This balance has been severely disrupted over the last decade by ruthless employer tactics. By closing a loophole in labor law and banning company practices that have subverted the promises and protections of the National Labor Relations Act, H.R. 5 will reaffirm the promise made to American workers more than 50 years ago when the NLRA guaranteed basic workplace protections.

Simply stated, H.R. 5 would prohibit employers from punishing workers who exercise their legal right to engage in a lawful economic strike to improve their working conditions. And what has the punishment been? Permanent replacement. In other words, workers who are permanently replaced are fired from their jobs for exercising their collective-bargaining rights.

Business opponents of H.R. 5 charge that this bill would permit and even encourage any disgruntled workers to protest their working conditions and walk off their jobs—leading to virtual chaos in the workplace.

Nothing could be further from the truth. The bill has no application to employees in nonunion settings. The chief sponsors of the legislation have stated repeatedly that H.R. 5, when it was drafted, was intended to protect only workers in unionized settings. During markup in the three House committees with jurisdiction over H.R. 5—the Committees on Education and Labor, Energy and Commerce, and Public Works and Transportation—each of the committees accepted an amendment clarifying this important point. The Congressional Research Service analyzed the approved committee language and concluded as well that H.R. 5 applies only to union workers.

I urge my colleagues to vote for H.R. 5 and repair the damage that has been done to fair and balanced collective bargaining in this country. Enactment of H.R. 5 is long overdue.

TRIBUTE TO FRANK RIZZO

(Mr. WELDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON. Mr. Speaker, yesterday a part of Philadelphia died when former Mayor Frank Rizzo died of a heart attack at his campaign headquarters in center city. But today, as we mourn his death, we celebrate the fullness of his life. In many ways Frank Rizzo lived the American dream. A high school dropout from Philadelphia's ethnic wards, he worked his way up to become police commissioner and mayor of the city he loved. He was a larger-than-life crime fighter, a tough, honest cop.

He was a hard-charging mayor who always put his city first. He was a loyal and devoted husband and father.

It is fitting that Frank died during a campaign because campaigning is what he loved best. Anyone who campaigned with Frank can attest to his boundless enthusiasm and limitless energy.

He loved the people and they loved him. Few politicians in Philadelphia history or even American history had as loyal a following as Frank Rizzo.

Yes, Frank Rizzo made enemies, as any leader with drive and determination was bound to do, but whether we agree or disagree with Frank's policies, we could all agree that he spent his entire life working to make Philadelphia a better place.

His attitude of dedication and service is one to be emulated by young people in Philadelphia and across America.

Yesterday Philadelphia lost one of its favorite sons. His city, our country will miss him deeply.

PROVIDING FOR CONSIDERATION OF H.R. 5, WORKPLACE FAIRNESS ACT

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 195 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 195

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed two hours, with one hour to be equally divided and con-

trolled by the chairman and ranking minority member of the Committee on Education and Labor, with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, and with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text printed in part 1 of the report of the Committee on Rules accompanying this resolution as an original bill for the purpose of amendment under the five-minute rule, and said substitute shall be considered as having been read. No amendment to said substitute shall be in order except the amendments printed in part 2 of the report of the Committee on Rules. Said amendments shall be considered in the order and manner specified and shall be considered as having been read when offered. Said amendments shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a member opposed thereto. Said amendments shall not be subject to amendment except as specified in the report. All points of order against the amendment offered as a substitute by Representative Goodling of Pennsylvania for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House, and any member may demand a separate vote on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from California [Mr. DREIER], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is yielded for the purpose of debate only.

Mr. Speaker, House Resolution 195 provides for the consideration of H.R. 5, legislation to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

Mr. Speaker, the rule provides a total of 2 hours of general debate time.

One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. Thirty minutes will be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce with the remaining one-half hour equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation.

The rule makes in order an amendment in the nature of a substitute printed in part 1 of the report accompanying the rule as an original bill for the purpose of amendment. This amendment is the bill as reported by the Committee on Education and Labor and as amended by the Committees on Energy and Commerce and Public Works and Transportation. The substitute will be considered as having been read.

Only two amendments are made in order under the rule. Both are printed in part 2 of the report accompanying the rule. Each amendment shall be considered as having been read and shall be considered in the order and manner specified in the report. The amendments are not subject to amendment except as specified in the report.

The first amendment is an amendment in the nature of a substitute to be offered by Representative PETERSON of Florida or his designee. The second amendment is to be offered by Mr. GOODLING of Pennsylvania or his designee.

The Goodling amendment is a substitute amendment and is in order as an amendment to the Peterson of Florida substitute. The Goodling substitute will be offered, debated in its entirety and disposed of before the Peterson substitute is debated. No other amendment is in order. Each amendment is debatable for 1 hour.

The rule waives clause 7 of rule XVI against the Goodling substitute. This waiver is necessary for nongermane provisions contained in the amendment. The previous question shall be considered as ordered on the bill. Finally, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, I rise in strong support of the rule and of H.R. 5. Swift passage of this rule will allow us to begin to debate responsibly, this critical issue of survival for the collective bargaining process for America's labor force. According to the law, workers may not be fired for engaging in a strike. Section 13 of the National Labor Relations Act guarantees them that right. However, they may be permanently replaced in those jobs if their employers desire to hire replacement workers. So, whether or not an individual can be fired does not really matter. In the end, he or she still loses the job. And whether it is through firing or replacement—it's still job loss because of a strike.

This rather confusing, and certainly unfair, policy came about as a result of a 1938 Supreme Court ruling known as Mackay Radio. Mackay Radio said that during an economic strike, strikers may be permanently replaced by newly hired employees. In the first 40 years following this ruling, there were few instances of employers actually hiring permanent replacements. However, the last decade has seen a dangerous trend evolve, as an alarming number of employers have deliberately hired permanent replacements to avoid addressing the valid concerns and complaints of their employees.

Beginning with the replacement of the PATCO workers in 1981 and leading up to more recent examples of Greyhound and Eastern Airlines—the practice of permanently replacing striking employees has also turned into a tool for those businesses more interested in union busting than in negotiating in good faith. Such actions effectively prevent union members from exercising their right to strike under the National Labor Relations Act as well as the Railway Labor Act. How can employees enter into collective bargaining when their employers know that by simply hiring replacement workers, they preclude any leverage those same workers may have at the bargaining table?

This legislation is critically important to American workers who in the past decade in particular have seen their hard-earned wages and benefits eroded by employers who are more concerned about mergers, leveraged buyouts, and short-term profits, than in achieving and maintaining a long-term economic growth through a productive, experienced, and reliable work force. H.R. 5 would overturn the Mackay and other subsequent rulings that unfairly undermine the rights of employees in favor of business concerns.

Passage of this bill would help put employers and employees on a level playing field. It is to the advantage of both business and labor if workers can go to the bargaining table and engage in debate, free from fear of arbitrary job loss. I hope Members will join with me in supporting the rule and in supporting H.R. 5.

□ 1010

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with all due respect to our chairman, I rise in strong opposition to this rule for H.R. 5, the so-called striker replacement bill. This rule might aptly be called the representative democracy displacement rule since it substitutes the judgment of the majority leadership for that of the 435 freely elected Members of this House.

Generally, you can tell how bad a bill is by how bad the rule is. H.R. 5 is no exception.

It is ironic, Mr. Speaker, that as dictatorial governments around the world are allowing democracy to flourish, democracy does not flourish in the House of Representatives. The title of the bill

is the Workplace Fairness Act, yet there is nothing fair about the procedures we are following to consider this bill.

For example, the Rules Committee not only rejected on a party line vote our attempt to get an open rule, it also rejected our efforts to make in order four amendments that were submitted to the Rules Committee by its 5 o'clock deadline on Monday. These amendments would substantively improve H.R. 5 and increase its likelihood of passage. They include the amendment offered by the gentleman from Texas [Mr. ARMEY], restating that employers are not required to rehire employees who engage in violence during a strike; the amendment by the gentleman from Tennessee [Mr. DUNCAN], excluding small businesses, most of which operate at the margin; and two amendments by the gentleman from Pennsylvania [Mr. RIDGE], that would establish a 12-week cooling-off period if a strike is ordered and management seeks to hire permanent replacements.

Let me just add that I suppose we should be thankful that Republicans will, at least, be granted our right to offer a motion to recommit with or without instructions. Frankly, it has always been a bone of contention with both sides on the Rules Committee, and I am pleased to see it included in this rule.

Mr. Speaker, as I mentioned, there is an observable pattern in the House whereby bad rules accompany bad bills. If enacted, H.R. 5 will destroy the very incentives that have led to 53 years of relative cooperation between management and labor. It will cause highly skilled American jobs to move overseas. It will allow unions, which make up only 12 percent of the work force, to increase their economic clout in far greater proportion to their representation in the labor market. And it will relieve labor leaders of the responsibility for being accountable for their actions when asking rank-and-file members to go on strike.

The truth is, H.R. 5 does not address any loophole, either perceived or real. Employers have had the right to hire permanent replacement workers for over 50 years. It's ironic, Mr. Speaker, that even President Carter rejected a ban on permanent replacement as dangerously destabilizing the management-labor balance.

American businesses are much more competitive than they were 10, 20, or 30 years ago. Today, many firms are unable to bear the costs of a plant shutdown. Unless H.R. 5 is open to amendments, it is a prescription for economic decline.

Mr. Speaker, let us demonstrate that we have not lost faith in the ability of this House to freely work its will. Vote down this rule so that we can restore a little workplace fairness to the workplace of the people's Government.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Illinois [Mr. EVANS].

Mr. EVANS. Mr. Speaker, by adopting a loophole in the law which allows them to permanently replace strikers, many large corporations like Greyhound and Eastern Airlines have thrown long-term employees out on the street and broken pension and health agreements.

This unfair tactic hurts more than just union workers and their families. Replacement workers are less skilled, they are paid less and are less productive. Thus local businesses, local economies, and local tax bases also suffer.

Countries like Japan and Germany guarantee the right of reinstatement after a strike. Apparently they recognize the necessity of a highly skilled work force in providing prosperity and economic stability. It is time for our country to do the same, and that is why I urge my colleagues to support H.R. 5 and this rule.

Mr. DREIER of California. Mr. Speaker, I yield 3 minutes to the very distinguished gentleman from New York [Mr. HOUGHTON], who is making a valiant attempt to amend this bill.

□ 1020

Mr. HOUGHTON. Mr. Speaker, I am going to vote against this rule. It is not because I do not respect the chairman of the Committee on Rules and the Members on it. It is not that I resent the fact that Democrats have control over this. It is not that I resent the fact that my amendment, the one that the gentleman from Pennsylvania [Mr. RIDGE] and I suggested, was not allowed.

However, I do think that it is wrong to have what was considered at that time a flawed amendment be approved, and something which was really a middle ground amendment not approved, which was ours. I frankly think that this system is crazy, the people are great. However, to allow that type of thing to happen is wrong because what I think it does, is it deprives the members of unions, as well as management, from seeking another option.

I feel as if I speak in DC and get a reaction in terms of AC. Let me tell Members what our bill does, although I think it is fruitless to mention it now because it will not see the light of day.

It recognizes two things: that there is an unfair condition at this moment; that ever since the firing of the air controllers, the extreme people in management have taken it upon themselves to have immediate response and give permanent replacement status to some of their workers. That is wrong. That was never the intent of the Wagner Act. That was never any intent of any of the labor decisions that have come along.

The problem it puts everyone in is that many Members on this side of the aisle believe in unionism, have worked with the unions, have arbitrated with them, but we find ourselves in the position whether it is one extreme or the other. On the other hand, Members may find themselves in a situation where somehow they must protect those who are risking everything they have to try to start and run a business. We have H.R. 5 on one hand, and we have the extreme of what is happening now on the other: Neither one is satisfying, neither one protects both, and neither one, really, is fair.

The situation that we tried to grapple with, is this basic underlying psychology that nobody wants to hire a permanent replacement or a temporary replacement. However, we have to have some discipline. When we hire a replacement, we poison the well. We ruin the relationship, the underlying trust that exists between management and labor. No person wants that. However, if a person feels that they can hire one just like that, or on the other hand, they never can hire, they have no situation which they can begin to bargain and negotiate reasonably. Therefore, I think this is an unfair rule for not allowing this bill, which we propose and is a middle ground, to be exposed, to protect those people which I think are now going to be unprotected, because this bill is not going to go anyplace. H.R. 5 is not going to go anyplace.

What we are trying to do, rather than getting gas off our stomach and making everyone feel good, we would like to have something which is a practical base for negotiations. I do not think, unfortunately, that is possible at the moment.

Therefore, I will vote against the rule, and I will vote against H.R. 5, reluctantly, and hope that at another time, at another day, we will be able to see the light of day in something that I think is a reasonable compromise.

Mr. MOAKLEY. Mr. Speaker, for the purposes of debate only, I yield 3 minutes to gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, when President Reagan fired the air traffic controllers in 1981, his message was clear. He said, "It is OK to hire scabs."

PARLIAMENTARY INQUIRY

Mr. ARMEY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman will state his parliamentary inquiry.

Mr. ARMEY. Mr. Speaker, is it parliamentarily acceptable to use the word "scabs" in floor debate?

The SPEAKER pro tempore. The Chair knows of no prohibition against the use of that word.

Mr. ARMEY. I have a further parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. ARMEY. Mr. Speaker, is it acceptable, then, for me to refer to people who represent unions as goons?

The SPEAKER pro tempore. The Chair knows of no prohibition against the use of that word.

Mr. ARMEY. Thank you, Mr. Speaker.

Mr. TRAFICANT. Mr. Speaker, I ask the chairman of the Committee on Rules for 3 minutes uninterrupted so I can proceed with my statement.

Mr. MOAKLEY. Mr. Speaker, I have no objection to yielding 6 additional minutes to the gentleman from Ohio.

In answering the gentleman from Texas, I hope those are the only two four-letter words we hear on the floor from the gentleman from Texas.

Mr. TRAFICANT. Mr. Speaker, continuing my statement, when President Reagan fired the air traffic controllers and the labor unions of this country turned their back and created a work climate that has produced an America with chief executive officers with golden parachutes, with American workers being thrown out, here is exactly what happened: President Reagan said, "It is OK to hire scabs." Scabs. Big business took it a step further. They said, "We will not only hire those scabs, we will keep those scabs on the job permanently."

That is exactly what happened. Let there be no mistake, we have that condition today. Since 1985, 20 percent of all strikes have had scabs gaining permanent jobs.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, does the gentleman know what the word "scab" means in a very, very common parlance of the union movement?

Mr. TRAFICANT. Perhaps the gentleman could tell me on that.

Mr. ARMEY. The word is derived from the works of Jack London, and it was originated as an expression he coined, that a person who decides not to choose to join a union, would not make a scab on a good worker's rear end.

I wonder if the gentleman, understanding that, would recognize that I have never joined a union, and I have, in fact, crossed picket lines. Would the gentleman then suggest that, therefore, I am a scab?

Mr. TRAFICANT. Mr. Speaker, reclaiming my time, if the definition would so apply to the gentleman and he would, in fact, place that definition on himself by his own words, let that be his decision, not mine.

All I am saying is that I come from a district that fought to get workers' rights, and I see Members in Congress here with a pen and pencil just sending those rights down the drain every day.

I will now go on with my statement. I think what I am saying here today is, it has gotten so bad for the American worker, that while Congress will protect flag burners, they will not, in fact, allow American workers to carry a picket sign without the veiled threat that they are not only going to lose their jobs, but lose them forever.

Mr. Speaker, since 1985, 20 percent of all strikes had scabs hired permanently, and one-third of all strikes since that time, American business has threatened the American workers with the permanent replacement of their job.

The last 12 years, we lost about 55,000 jobs. Since the air traffic controller situation, companies in my district and throughout Ohio were very glad. They bused their men. When I was sheriff, one time I had to run, literally, safety inspections on buses. Scabs were being hauled in to threaten their workers at our plants, who had already taken concession after concession after concession. By the way, after I ran those safety inspections, those buses were not safe, and the sheriff had to stop those buses from entering. But I will be damned if I was going to have someone pull out a gun, shoot somebody in my town, and then blame it on labor. That did not happen. That problem was resolved.

I want to say this to Congress today. We have a fundamental right here today. There are no consumers without workers. If workers do not have some sense, some sense of permanence in their workplace, they are not good workers. The American workers take in concessions. They have been out on the line here for the last 10 years. Labor has kowtowed to the President. They have set a precedent in place, and labor cannot stop it now.

Labor made a big mistake, but I am not here today for labor. I am here today for working people. If it were not for many of those gains that the working people, through labor, have initiated, Congress would not have the pension it has, the American worker would not have the health insurance it has, and our Nation would not be as strong as it is today. Our industry would not be as vibrant, as viable, and yes, as competitive.

I want to say one last thing before I close. I say that hiring scab labor and keeping them on permanently is so bad that not even Japan will do it.

□ 1030

I am asking the Congress to pass H.R. 5. I support the rule, and I appreciate the time from the gentleman.

I do not like anyone to refer to me as a goon. I am not a goon, but I am saying this. Regardless of the definition, those people who come in and take another's job, with business in fact a part of that process, those are scabs.

Mr. DREIER of California. Mr. Speaker, to respond to the gentleman from Ohio, I am happy to yield 3 minutes to the gentleman from Texas [Mr. ARMEY], a hard-working member of the Education and Labor Committee, who has authored a very important amendment dealing with violence, which tragically is not incorporated in this rule.

Mr. ARMEY. Mr. Speaker, labor law should protect the rights of all working men and women, not only that 16 percent of the nonpublic labor force that elects to join unions, but that far greater percent of the private labor force, 84 percent, that elects not to join a union or not to go on strike. They should have their rights protected, particularly the right to be free from violence. Not only should they be protected from physical violence, but they should be protected from the violence that comes from having themselves slurred because they chose to exercise their free right as American men and women to go to work and to do so on their own terms, rather than on the terms defined for them by a group of remote, uninformed, uncaring, insensitive bureaucrats in Washington's AFL-CIO.

Now, I offered an amendment to protect this majority of free American men and women from the violence that is perpetrated against them when they choose to go to work by people on strike, and the committee met my offering with a violent rejection, using this tactic of slurring the character and the names of those free men and women who exercise their rights.

This is labor law? This is labor law that allows us in the Halls of Congress to use these kinds of slurs to describe the citizens of this country?

Mr. Speaker, I have to say in all due respect, I am disappointed in the inability of the Chair to enforce some standard of civility by which we characterize our constituents in this body.

Now, the chairman of the Education and Labor Committee, after they shouted down, hooted down and slurred my amendment and the people it represented, promised me personally that he would come before the Rules Committee and ask for an open rule where the rights of all Members to participate in this process would be protected, and right in front of me in the Rules Committee he specifically requested the Rules Committee not to allow me to offer this amendment that protects American working men and women from the violence perpetrated by a minority of militant malcontents on a union picket line.

I have had people in my office who have been shot in the leg through a truck door with armor-piercing ammunition.

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. DREIER of California. Mr. Chairman, I yield 1 additional minute to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, I am going to ask this body to vote no on the moving of the previous question on this rule in order that we can send it back to the Rules Committee and see if the Democrat majority in this Congress is willing to write a rule that allows us to offer an amendment that protects the physical safety of working men and women on their way to work in this country from violent mobs in the streets and protects these same men and women from having themselves and their names slurred in front of their children with this awful epithet that the unions employ for any free man or woman in this country who chooses not to join or participate in their actions.

It is not acceptable to overextensively guarantee the rights of a minority in such a way that allows them to wreak physical and mental abuse on a majority of hard-working, decent American men and women, and I am sorely disappointed in the inability of this Congress to represent the people of this country.

Mr. MOAKLEY. Mr. Speaker, the gentleman from Texas appeared before the committee with his amendment. The amendment reads that this paragraph shall not apply in any case in which the labor organization involved in the labor dispute concerned engages in or encourages its members to engage in violence during the dispute.

Mr. Speaker, this amendment simply restates current law by stating that companies do not have to rehire employees who engage in violence during a strike. That language is already on the books, and the committee felt that it was just redundant.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I am glad to yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, the gentleman will recall in the committee yesterday, the language that we have here is specifically with respect to strikes on the books. "Disputes," extends the concept and makes it less illdefined. If in fact this is nothing but a reaffirmation of the law, it should not be met with the kind of violent response with which it was met in the committee and the rejection by which it was met by the gentleman's committee.

Mr. MOAKLEY. Mr. Speaker, the gentleman's amendment was not met with any violence in my committee.

Mr. ARMEY. I did not say it did.

If the gentleman will yield further, I must say, and let me do make it very clear, the gentleman is a gentleman and runs a fine committee. It was not met with violence in the gentleman's committee. It was simply rejected.

My daddy always taught that it was better to be persecuted than ignored. I do not know, but it felt better in the gentleman's committee.

But I will say, my complaint is not with the gentleman. I do not believe the gentleman from Massachusetts would be so insensitive as to use the kind of language that we have heard on the floor today.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, 40 years ago, the United States led the world in terms of our industrial prowess, the development of new technology, the wages and benefits that we paid to our workers. Today, as major corporations are busy investing in Third World nations and throwing American workers out on the streets, we rank 10th in the world in terms of the wages and benefits paid to our industrial workers, and for the first time in our history younger workers are earning less than older workers. Children can expect a lower standard of living than their parents, for the first time in our history.

One of the reasons for the decline in the standard of living of our working people is that the organizations which represent them, the trade unions, are also in decline. In 1954, 34 percent of the workforce was organized. Today we are down to 16 percent.

Mr. Speaker, the right to strike for better wages and better working conditions is a basic American right, but it is a right which means nothing if it means that you are going to lose your job when you exercise that right. What does a right mean when you go out and you take advantage of that right and you lose your job?

Mr. Speaker, let us today stand with the working people of this country and tell the corporations that they cannot take away the basic rights of American workers, that they cannot replace workers on strike with permament replacements.

Let us pass H.R. 5, and be prepared to override a Presidential veto, if that is what we have to do to protect American workers.

Mr. DREIER of California. Mr. Speaker, I am happy to yield 1½ minutes to the gentleman from Tennessee [Mr. DUNCAN].

□ 1040

Mr. DUNCAN. Mr. Speaker, many people have spoken in recent weeks about the harmful effect H.R. 5 would have on small business. It is clear beyond a shadow of a doubt that many Federal laws, rules and regulations are much more difficult and much more expensive for small businesses to comply with than giant corporations.

Because of this, yesterday I asked the Committee on Rules to allow me to offer a small business exclusion to H.R. 5. The amendment offered was a moderate one, limiting this exclusion to businesses half the size designated as small by congressional small business committees. In spite of the fact that there are fundamental differences between labor relations at a business employing thousands and a locally run small business, the committee would not allow the amendment to come to the floor.

Big businesses are financially stronger. They would be able to handle replacements easier than small businesses would. Almost every situation cited as showing a need for this bill is a big-business situation, such as Eastern Airlines.

Many small businesses are marginal at best. They are going out of existence at a rapid rate in this Nation, largely because of Federal favoritism toward big business.

H.R. 5 should not be applied to the mom and pop operations and other small businesses of this Nation.

This will only help the big to get bigger.

Ultimately it will decrease freedom and opportunity in this Nation, and ultimately it will hurt every working man and woman in this country.

Make no mistake about it, to vote for H.R. 5 in its present form is a vote against small business.

I would have voted for this bill had it had a reasonable small-business exclusion. Unfortunately, we will not have that opportunity.

So I urge my colleagues to vote "no" on this rule.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the amendment of the gentleman from Tennessee would exclude companies or corporations of 250 members or under. And 99 percent of the companies would fit that category and 80 percent of the employees. So his amendment would, in effect, gut the bill. That is why it was not made in order.

Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Maine [Mr. ANDREWS].

Mr. ANDREWS of Maine. Mr. Speaker, today we begin debate on an important piece of legislation, H.R. 5, The Workplace Fairness Act. This bill in its essence is not about labor or management. It's not about liberal or conservative, left or right. It's about fairness, Mr. Speaker. It's about justice.

Today, you will hear all the horror stories about what it will do to American businesses if they aren't allowed to hire permanent replacement workers during a strike.

Well, I want to tell you what it did to a small town in my home State. Three years ago, 1,200 workers at the International Paper Co. mill in Jay, ME, went on strike to protest the company's refusal to negotiate a contract. The company immediately hired permanent replacement workers, many of

them from out of State. Generations of workers from the surrounding towns had given their blood, sweat, and tears to make the company strong and prosperous. Overnight, their jobs were gone, their livelihoods destroyed, their communities divided.

Almost every industrialized nation, including Poland, prohibits the replacement of strikers with permanent workers. In Canada, Japan, France, The Netherlands, Germany Greece, Italy, Spain, in all of these countries and more it is illegal to do to their workers what International Paper Co. did to the workers in Jay, ME.

Mr. Speaker, the decade that gave us junk bonds, leveraged buyouts, and S&L's also gave us Patco, Phelps Dodge, and Frank Lorenzo. To restore America's greatness we must first restore the rights and the dignity of the American worker.

That is why I urge you to vote in favor of H.R. 5, and support this rule.

Mr. DREIER of California. Mr. Speaker, I yield 4 minutes to the gentleman from Erie, PA [Mr. RIDGE], who has authored two of the most important amendments to this bill but, tragically, they have not been incorporated in the rule.

Mr. RIDGE. Mr. Speaker, I'm tired of the "are-ya-with-me-or-against-me" attitude on this issue. People's livelihoods are at stake and without a compromise, nothing will get accomplished.

Our Nation's economic growth and success is due to the American people's intuitive sense of balance and fairness. If the balance of rights and obligations shifts one way, then our basic sense of fairness and justice swings the pendulum toward the other.

It's not a smooth swing. Heated debate and discussion are the energy that fuels the pendulum swing.

But there's no debate and discussion here. No opportunity to reach a compromise that benefits those the proponents of H.R. 5 purport to help: the working men and women of this Nation.

It's either you are with me or against me.

H.R. 5 won't become law. The leadership of labor will get their vote. Their litmus test. They'll tell their membership the House passed the bill. They'll tell them who is with them, who is against them. But in the end, nothing will change.

The distinguished majority leader of this body called two attempts to reach a compromise baloney. But what will the majority leader say to the rank-and-file union members 1 year from now when nothing's changed? What will he say when workers are still replaced, when they ask him how are they going to feed their families?

I'll tell you what he'll say, he'll say let them eat baloney. That's all they'll be able to afford. But he got others their vote. He'll go to the conventions and fire up the crowd and get a standing ovation. But that fire will be extinguished quicker than you can say scab when those folks realize all they got was a vote. And it's hard to feed a family with a vote.

Today politics will triumph over policy. Proponents and opponents will claim victory. But nothing will change in the workplace. The rights offered in H.R. 5 will never be enjoyed by workers.

Symbolism will triumph over substance. Professional lobbyists will ring their hands with delight. Delight, not in a victory for working Americans, but delight in having an issue they can use to rally their members, to raise money, and to send out reams of self-congratulatory letters to their membership.

Today, we are asked to consider the positions at both ends of the spectrum. There was one somewhere in the middle which I and some of my colleagues attempted to offer during this debate. We will never know whether that compromise could have bridged the gap enough to provide some real protection for American workers, for that debate was left behind closed doors in Rules Committee. For you see, if a rational, fair and honest compromise could have been brought before this House, the professional political lobbyists, whether representing labor or business, may not have the chance for their propaganda victory, the triumph of rhetoric over action; of sound bites over substance.

There is no legitimate alternative to the bookend proposals before us today. Let me then speak directly to American workers who want to believe they are being well-served by this body today. You're not. You are being used as fodder for the inside-the-beltway game of who can score highest on the public relations meter.

Shortly after this issue dies here in Washington, you will be inundated with letters and articles from your leadership telling you how close victory was and asking for further assistance so next time true victory will be attained. I am not sure exactly who you are, but for some who are listening, the next time this issue is discussed in the District of Columbia you or a member of your family may be out of a job because of this Chamber's inability to be honest with you or itself.

Sometimes leadership is telling you what you need to know—not what you want to hear.

This vote tells you what you want to hear. This House has failed you because H.R. 5 is going nowhere. It is DOA [dead on arrival]. Political merits and demerits will be assessed, but working men and women will gain nothing.

There is a problem in the workplace. H.R. 5 will not fix it. I have discussed this matter with hundreds of representatives from organized labor. They are understandably concerned about their job security.

The world is truly a more competitive place. Competition is much tougher and worldwide. Membership in organized labor is down from 34 percent of nonagricultural workers in 1954 to 16 percent today. Labor leadership is under great stress to reverse this trend and have no foreseeable way of doing so.

Trade laws aren't equitably enforced. The recession is squeezing labor and management. Management is trying to be more competitive and productive and negotiations are tougher. And finally, on occasion there appears an uncaring, unthinking and unscrupulous business type who seeks to destroy rather than negotiate.

While replacement workers are rarely employed in strikes, it happens often enough in the environment I previously described to make people very anxious, if not downright scared.

Labor leaders have used H.R. 5 to play on that fear. It is a sham and a shame since everyone in Washington knows it's not going anywhere, it will not be law—just a great applause line in a speech.

We need to do more than that for our workers. Let me tell you why.

For about a half century, there was a simple rule in the workplace: No contract, no work. Recently, that rule has not been so simple.

The labor movement argues that since about 1981, when President Reagan hired replacement workers for striking Professional Air Traffic Controllers, more and more employers have been willing to replace strikers with nonunion workers. Worse, labor argues, is the contrivance of labor disputes in order to bust the union.

In 1938, the U.S. Supreme Court ruled in National Labor Relations Board versus Mackay Radio & Telegraph Co. that employers had a right to keep their businesses operating during strikes over economic issues. They could hire workers to take the place of those on the picket lines. They could not, however, hire replacement workers during strikes over unfair labor practices. The distinction between the two is often blurred.

For reasons ranging from a strong organized labor force to public attitudes toward businesses that replace strikers, few employers actually permanently replaced workers who exercised their right to strike. But, according to labor, all that changed in the early 1980's.

Legislation strongly supported by labor, and equally denounced by business, will shortly come before the Congress that seeks to address what some believe is the erosion of the strike as the weapon of last resort. It bans the use of permanent replacement workers.

Labor argues that the legislation restores equity in the collective-bargain-

ing process. If labor can't strike without fear of losing their jobs then the delicate balance of power at the bargaining table is tipped decisively in management's favor.

The business community argues that it would be extremely difficult to recruit even temporary workers unless those workers had a chance at a job with a company, if they performed well. Of primary concern to business is that the legislation may encourage the use of strikes since labor would have little to lose.

As a strong supporter of the collective-bargaining process, I have closely reviewed this issue. I think there is enough evidence for Congress to act. I also think that an outright ban on the use of permanent replacement workers is not the solution, nor does such legislation have even the remotest chance of becoming law.

That's why I have proposed the Collective Bargaining Protection Act of 1991. This legislation would establish a 12-week cooling-off period to enable the parties to sit down, roll up their sleeves, and bargain. The way the process is supposed to work.

It's a balanced approached because both sides must first exercise their ultimate weapons: Labor must vote to strike and management must decide to use replacement workers. Both sides would have 12 weeks to reach an agreeement. Most labor disputes are settled within 3 months. In the meantime, striking workers would not have to fear losing their jobs and the company would be able to conduct business.

Strikes are disruptive to our economy. They are even more disruptive to workers and their families who feel forced to resort to labor's ultimate weapon. The Collective Bargaining Protection Act is a better approach. It restores that delicate balance of power in labor-management relations so crucial to a productive and competitive economy. An economy that's fair to the worker, the employer, and the consumer.

I regret I could not offer the Collective Bargaining Protection Act as an amendment. I regret that most of Washington Labor Leadership was not inclined to offer a legislative proposal that had a reasonable chance of being enacted into law. When they become more interested in substance not symbolism and concerned with policy not politics, I hope they give me a call.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Pennsylvania [Mr. MURPHY].

□ 1050

Mr. MURPHY. Mr. Speaker, I thank the chairman of the Committee on Rules, the gentleman from Massachusetts [Mr. MOAKLEY], for this opportunity to speak on behalf of the rule. We will have hours of debate as the day progresses to discuss the merits or demerits of this legislation, and I would like to say in answer to the gentleman from Pennsylvania [Mr. RIDGE], my good colleague, that this is a very limited measure in itself, and we will discuss that during the day later.

I do not know; I am sorry that I missed the opening few minutes of the debate, but something apparently set off my good friend and colleague on the committee, the gentleman from Texas [Mr. ARMEY]. But I would like to say in answer to what he was speaking of; he was besmirching this legislation and painting all unionized workers in our country of violent activities, that that is not the case. We have ample laws, in answer to the gentleman from Texas, to protect us against violence from whatever source may be. Sometimes we are not satisfied with the enforcement of that protection, whether it be on the streets of Washington, DC, or in the coalfields of West Virginia or western Pennsylvania. But every State and every community in our Nation has a law against violence.

Believe me. Coming from the coal country and the steel valleys that I come from, I have seen those laws enforced against union activities, against law violaters. There are ample laws. We do not need to encumber this legislation with talking about supposed violence because it is already controlled. There are Federal laws, ample Federal laws, that protect legitimate worker activity, whether it be unionized or nonunionized.

Mr. Speaker, we are seeing today in the Federal courts provisions that limit the number of pickets on a picket line to a very, very few members, as low as three, and four, and five, and six. There are fines if unions permit or encourage their members to commit any type of violent activity. We saw last year where the United Mine Workers of America union was fined thousands and thousands of dollars, not because of what the union did, but because of what some radicals were accused of doing.

There are plenty of laws, and I say to my colleagues, "You need not encumber this very limited legislation."

I think we should support this rule. It is a good one. We offer the opportunity for two full substitutes, one by the gentleman who is the ranking member on the Committee on Education and Labor, the gentleman from Pennyslvania [Mr. GOODLING], which will totally limit this legislation, and we will debate his amendment in full. Then there is one by the gentleman from Florida [Mr. PETERSON] which further limits and clarifies this measure. There are ample amendments being offered. There will be ample debate time, and I see no reason that we should not adopt the rule, pass the previous question, and go on with the debate as it is.

Mr. Speaker, let me say to the gentleman from Pennsylvania [Mr. RIDGE], my very good friend and colleague, who he and I are perhaps 2 percentage points apart in voting in our history together in Congress, who says the matter is going nowhere, the following:

I submit to those of you who are in your offices listening on both sides of the aisle that, if you think it is going nowhere, let's think about the votes that Claude Pepper cast back in the 1930's, or Lyndon Johnson in the 1940's and 1950's, or John Kennedy in the 1960's, and Hubert Humphrey in the 1950's and 1960's. Many times these great leaders of our country voted, and they lost, but what they provided us was a constant, steady flow of a vision for America of improvement in our legislation, improvement in the conditions of our workers, improvement in the lives of our people.

So, Mr. Speaker, the threat of its not going anywhere does not deter me, and I say that it did not deter those great Americans. Let us go on with the measure.

Mr. MOAKLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. MOAKLEY] for yielding time to me, and I rise in full support of this rule. I think it is a fair rule, and I think it is the kind of rule that we need. We have permitted the minority to have their say.

Mr. Speaker, I rise in support of House Resolution 195. In my view, H.R. 5 is the most important legislation affecting the rights of workers that this body is likely to consider in the 102d Congress. This rule enables the House to consider practical alternatives to the bill as reported by committee without being sidetracked by demagoguery. The rule fully protects the minority by making in order a motion to recommit with or without instructions.

The rule makes in order an amendment in the nature of a substitute to be offered by Mr. PETERSON. Mr. PETERSON has drafted a substitute amendment dealing with the difficult issue of representational strikes. I support making this amendment in order. I will support the amendment when it is offered.

The rule also makes in order an amendment in the nature of a substitute to be offered by Mr. GOODLING. Mr. GOODLING's amendment seeks a middle road in what is admittedly a very partisan and emotional issue. While I do not believe this amendment adequately protects the rights of workers, and will oppose the amendment when it is offered, I believe the House should have the opportunity to consider it.

H.R. 5 seeks to restore balance to our system of labor-management relations and protect the right of American workers to exercise a voice in the determination of their wages and working conditions. Its enactment will both further the economic security of the citizens of this country and promote the democratic values which serve to distinguish our country from all others. I urge the Members of this House to support this rule that makes possible consideration of the vital legislation and I urge the Members to support H.R. 5 when this rule is adopted.

Mr. DREIER of California. Mr. Speaker, I yield 3½ minutes to the gentlewoman from Maine [Ms. SNOWE], our very hard working colleague.

Ms. SNOWE. Mr. Speaker, I thank the gentleman from California [Mr. DREIER] for yielding.

Mr. Speaker and Members of the House, I rise in strong opposition to this rule, and I join the efforts of the gentleman from Pennsylvania [Mr. RIDGE] and the gentleman from New York [Mr. HOUGHTON] that we should have been permitted to offer an amendment addressing the cooling-off period that was proposed in the Ridge proposal. That is something that we worked on because we thought it was a fair and more effective approach.

There is no need to restrict this debate today, especially when we are contemplating labor law reform of this magnitude and for the very first time in more than 53 years. Why is the Democratic majority so afraid to hear that there are options to address this problem and other meritorious arguments that should be considered here on the floor of the House today?

Mr. Speaker, our goal should be simple. One is to insure that equilibrium exists in labor-management relationships. We should seek to insure that neither side in a labor-management dispute holds such a procedural advantage that it can force capitulation of the other side, and we did seek to encourage good-faith negotiation by both sides in a dispute so that they discuss and work out their differences rather than resort to confrontational tactics. With those goals in mind, we must then answer the question as to whether the use of permanent replacement workers has thrown the labor-management relationship out of balance, and, if so, what should be done.

I believe in then, Mr. Speaker, a position to speak to this issue because of the experience in my district in 1986 with Boise Cascade and in 1987 and 1988 with the International Paper Co. in Jay, ME. Nearly a 1,000 workers were supplanted by permanent replacements in Jay, and the signal that permanent replacements would be used came early on in the dispute. Management would argue that they did so because the union struck at five plants simultaneously across the country and they did not have sufficient personnel to maintain the plants. Frankly, though, International Paper management did not act prudently in hiring permanent replacement workers. They were ill served by this action, especially in a one-company town. It tore the community asunder, it pitted neighbor against neighbor and fathers against sons, and the wounds will exist for a very long time. No one won in this dispute, and everyone lost.

Mr. Speaker, the problems was that the fevered emotions on both sides never had a chance to abate, and tempers ran high, and beating the other side became the focus, not solving the impasse. There was never time, nor the opportunity, to get a perspective of issues at hand. Use of permanent replacement workers did play a role in the escalation of this situation, but will banning replacement workers address the problem? No. I would suggest that in fact it will skew the balance. What was needed in Jay, ME, and other places was a cooling-off period, a chance for both sides to take a second look at their disputes without immediate threats overhanging.

Mr. Speaker, that was the basis for the proposal that we wanted to offer that would be offered by the gentleman from Pennsylvania [Mr. RIDGE]. We developed this compromise providing for a 12-week cooling-off period which would start upon the time that temporary replacement workers were hired. That was the key in this legislation that was different from the substitute that will be subsequently offered. This delayed trigger would be most advantageous because it allows for more distance between the start of a strike and the use of replacement workers. This delay trigger is important because it provides a nonthreatening window in which both sides can work to solve the dispute. Unfortunately the Committee on Rules did not see it that way and denied us the opportunity to offer this proposal.

Therefore, Mr. Speaker, I am urging defeat because I do think that we should have the opportunity when issues of this importance come up before the House, we should have the opportunity to consider various options, and I think the very fact that we were not allowed to offer this proposal is because ultimately it could have gained the support of the majority in this Chamber because it is fair and the most effective approach in trying to address the problem. H.R. 5 would simply overreach in trying to restore balance.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I happen to be one of those who believe that H.R. 5 is a very unfair bill and that union leaders who represent only 12 percent of the work force in private industry in America are trying to rewrite the delicate balances which exist in regard to the last resort, for instance, that unions do not want to use, and that is the right to strike, the last resort that employers do not want to use, and that is having to go out and hire a new work force, and the last resort which many workers, union and nonunion, do not want to consider, and that is making a decision whether to go to strike or exercise their right not to strike.

I cannot explain to the people back home, for instance, about what a closed rule is because everybody back home, I think in all of our districts, really believes that, if their Member of Congress has an amendment, he is going to be able to rise on the floor and present that amendment.

□ 1100

And here I hear my colleagues, like the gentleman from New York [Mr. HOUGHTON], the gentleman from Tennessee [Mr. DUNCAN], the gentleman from Texas [Mr. ARMEY], the gentleman from Pennsylvania [Mr. RIDGE], and the gentlewoman from Maine [Ms. SNOWE]—and all of them are good Members; they do not cause problems in this body—are being forced to come here, rather obsequiously, and say, "If only I had had my right to be able to present this amendment, this is what I would say."

This is a tremendously important bill. For this Congress and many Congresses before and many Congresses after, it is very, very important, because it is going to obliterate over 50 years of labor law, ever since the Wagner Act. We should not treat it in this way. I have a great deal of respect for the gentleman from Massachusetts [Mr. MOAKLEY], but the gentleman said, for instance, "We didn't allow a certain amendment because it would have gutted the bill." He is a good man, he is an intelligent man, but that is the job of this Congress, to determine whether or not an amendment is going to gut the bill or whether it is good or bad or indifferent.

But the people of America will never hear the debate, the real debate that ought to take place here. We will have a relatively short period of time to debate, and when I go to town hall meetings and try to explain this, that we really do not have the right in the House to stand up and represent our districts and offer amendments, they do not understand. I understand why they do not understand, and that is why I am voting no on this rule.

Mr. DREIER of California. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, the word "fairness" is breathed with almost reverence on this floor by numerous Members. We hear the word "fairness," as though it is something that just oozes from the pores of the majority side until we see a rule like this one.

I just want to give a couple of examples. First of all, we have the Armey amendment. I talked to the gentleman from Texas [Mr. ARMEY] a few minutes ago. I understand his amendment was offered in the committee, and that the chairman of the committee told him that it would be an open rule and he would get a chance to offer it on the House floor. What we find out is that not only is this not an open rule, but the chairman specifically went before

the committee and asked the committee to deny Mr. ARMEY his chance to offer his amendment because, as the chairman said in at least one public print that I saw, this is an issue that is already covered "and we don't want to highlight it on the floor, namely, labor violence."

Well, let me say that is not fair. Yet what is fair? The gentleman from Florida [Mr. PETERSON] comes to the committee—and I just read the transcript of the committee—and indicates that he has an amendment that has not been fully drafted yet, that he is not sure exactly what is in it, but he has this amendment and he wants it to be offered on the floor; it might be an amendment, it might be a substitute, but we are not sure exactly what it is going to be.

Now, let me ask, what is made in order? Is Mr. ARMEY's amendment made in order? No, Mr. PETERSON's amendment is made in order.

I think I am being fair here. I will ask the gentleman from New York [Mr. SOLOMON], who had a dialog with Mr. PETERSON, did the gentleman not indicate to you during the course of your deliberations that the amendment he had originally set up was just set up to kind of keep the door open so that he could actually draft an amendment that would actually come to the floor?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, I am disturbed as to how this process took place, because we all are under instructions and we all try to cooperate when we are asked by our good chairman, the gentleman from Massachusetts [Mr. MOAKLEY], to file our amendments by a prescribed time of 5 p.m. When we got the report at 5:15 p.m., there was one amendment that had no name, and it was an amendment, not a substitute. Later on we find, around 7:30 or 8 o'clock that evening, that it was some substitute offered under the name of Peterson, who is a new Member of this House.

Mr. WALKER. Did the gentleman ask who wrote the amendment?

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield to me since he used my name?

Mr. WALKER. I will in just a minute, but first I want to clarify a point here.

Let me ask the gentleman, do we have any idea who drafted the Peterson amendment?

Mr. SOLOMON. We had no idea who drafted the amendment.

Mr. WALKER. Mr. Speaker, I understand he did not seem to know exactly what was in the amendment when he was testifying before the committee. Is that a fair characterization?

Mr. SOLOMON. No; he said he was not sure why it was being handled as a substitute.

Mr. WALKER. I am just very confused by the fact that we have amendments, and that one amendment that was discussed cannot be offered on the floor, but an amendment that no one ever heard of before the Rules Committee now can be offered on the floor.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield to me?

Mr. WALKER. I yield to the chairman of the Rules Committee.

Mr. MOAKLEY. Mr. Speaker, the Peterson amendment was received by the Rules Committee in draft form within the prescribed time limit.

Mr. WALKER. I have taken a look at the two amendments, and they are entirely different, and he himself said at your committee meeting, I say to the chairman, that the amendment he originally submitted on time was not the real amendment, that that was something that he submitted just to keep the door open.

Mr. MOAKLEY. No. What happened is that he submitted the amendment, but after sitting down with the chairman, I think they put it in more proper form, and there was a difference between the amendment and a substitute. But it was the same language after they clarified the form that it should be in.

Mr. WALKER. Did he not say before the committee that the amendment he submitted was just something that he submitted to keep the door open?

Mr. MOAKLEY. No; I do not remember him saying that.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield to me?

Mr. WALKER. I read the transcript, and I thought that is what I saw. I think we ought to go back and look at that.

Sure, I am glad to yield to the chairman of the Labor and Education Committee.

Mr. FORD of Michigan. Mr. Speaker, I hope that I have misunderstood the gentleman. It sounded as though he was attacking my veracity in suggesting that I promised my committee I would ask for an open rule and then did something different.

Mr. WALKER. No; what I said was that——

Mr. FORD of Michigan. I have said that we ought to have the record of my testimony before the Rules Committee inserted in this record at this point. I will say to the gentleman very clearly that I asked for an open rule.

Mr. WALKER. Let me reclaim my time.

Mr. Speaker, what I said was that the gentleman from Texas [Mr. ARMEY] whom I had talked to indicated to me that when his amendment was denied in the committee, you told him it would be OK because you would be operating under an open rule and he would have his chance, and then specifically all I accused you of in the committee was that you specifically denied Mr. ARMEY an opportunity to offer the amendment.

The SPEAKER pro tempore (Mr. MCNULTY). The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I am told that my testimony before the Rules Committee cannot be inserted in the RECORD, but I do remember the exchange with the gentleman from Texas [Mr. ARMEY] and I did, in fact, have a formal statement in which I asked for an open rule.

What I said is that the gentleman from Pennsylvania, who was not there, who talked to the gentleman from Texas [Mr. ARMEY], and then on the basis of a rumor of what happened in the Rules Committee, a place that he was also not present at, he accuses me of giving my word to a member of my committee and then doing something different. I want to tell the Members categorically, without any question of the gentleman's ability to test the real evidence, that I did, in fact, tell Mr. ARMEY I had asked for an open rule, and I did, in fact, ask for an open rule.

Mr. ARMEY. Mr. Speaker, will the gentleman yield? The gentleman used my name.

Mr. FORD of Michigan. Yes, I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, did the gentleman not specifically suggest and recommend to the Rules Committee that they not accept my amendment in the rule?

Mr. FORD of Michigan. No. When I was asked about your amendment yesterday, as to the merits of the amendment, not whether it should be in order, I stated—and this is accurate—that your amendment makes no substantive change in the law, that it was purely a piece of mischief, and it is today. Some people would have referred to it as "demagogic," but because the gentleman is a member of my committee, I would not attribute that motive to him.

Mr. ARMEY. Mr. Speaker, will the gentleman yield further?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, the gentleman assured me specifically in the Committee on Education and Labor that he had asked for an open rule and sought to protect every Member's right to participate.

Mr. FORD of Michigan. I did that.

Mr. ARMEY. And when you were in the Rules Committee yesterday, you specifically asked them not to accept my amendment in the rule. I was in the room, I heard you, this is not rumor, and that is exactly what happened.

Mr. FORD of Michigan. When I was in the Rules Committee, I was asked, "What about Mr. ARMEY's amendment?" and I said, "Mr. ARMEY's amendment does nothing to improve or change the National Labor Relations Act in any way. It is pure show business."

I talked to the substance of the gentleman's amendment, not whether it should be recognized.

Mr. ARMEY. Mr. Speaker, if the gentleman will yield one final time, irrespective of the inaccurate characterization of my statement that you made, you did specifically ask the Rules Committee not to accept my amendment.

Mr. FORD of Michigan. Mr. Speaker, if I may reclaim my time, I am not inaccurate, and I submit that if the gentleman thinks it is inaccurate, he should go back to the books and learn a little bit about labor law before he starts arguing it on the floor.

The SPEAKER pro tempore. The time of the gentleman from Michigan [Mr. FORD] has expired.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. RITTER].

□ 1110

Mr. RITTER. Mr. Speaker, I am personally familiar with the contributions of organized labor to the health and well-being of our Nation. I personally was a member of four different labor unions while growing up and going to school, ironworkers, plumbers, the UAW, the teachers. Both my parents were members of labor unions. The contribution is there. The legacy is long. It is legitimate. It is laudable.

Lech Walesa changed the world with a strike, but we are in totally different circumstances here in this country today, Mr. Speaker. We face massive competition both in our home markets and abroad and we need to work more cooperatively together.

We need teamwork. Any legislation that promotes the ease with which people can strike works against teamwork. Teamwork is not gained by making strikes easier.

In the quality revolution, each and every worker becomes his or her own best manager. Given the education, the training, the recognition, the reward, the responsibility, workers' and managers' distinctions are blurred. Hierarchies in management today are being removed. People are called associates. The "we" and "they" is gone. It is obsolete. "Us" and "them" is obsolete.

In the best quality companies, workers are managers, managers are workers. It is absolutely essential that what we do in this Congress spur the quality revolution, spur the opportunity for teamwork and not promote the opportunities for further dissension. We need less strikes, not more.

Mr. DREIER of California. Mr. Speaker, I will say that this debate that we have seen here today demonstrates that fairness in the workplace does not exist. This is the people's workplace here in the House of Representatives. We have had a litany of amendments that people have tried desperately to incorporate to improve this measure. Tragically the rule does not include them.

I urge a no vote on the previous question.

Mr. Speaker, I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, to close the debate, I yield such time as he may consume to the gentleman from Montana [Mr. WILLIAMS].

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Montana [Mr. WILLIAMS], is recognized for up to 5 minutes.

Mr. WILLIAMS. Mr. Speaker, I have been in this body for more than a dozen years now, and I am always surprised that any time we bring legislation to the floor of this House which has as its intention the extension of simple rights to Americans, that legislation invariably creates great verbal pyrotechnics on this floor. Perhaps those bills that seem the most flammable are those which seek to provide simple rights for America's workers. Perhaps it is the word "labor" that creates all these charges and countercharges, but this bill is not about labor, organized or unorganized. It is about workers.

We have heard a lot of rhetoric this morning. We are going to hear more this afternoon. We have heard about the insensitivity of the Committee on Rules. We have heard and will hear more about big labor bosses or thoughtless corporate tycoons. We have even already debated whether or not Members of this House, honored Members, have broken their word.

One Member said that this bill is going to obliterate labor law and another Member said this bill is going to decrease freedom in America. For heaven's sake, for heaven's sake.

We had a plant closing bill on this floor 3 years ago. Let me give my colleagues just one quote from that debate.

"Does anyone believe that this plant closing bill will help the workers of this country? No. It will provide for losing jobs in America. It will provide for discouraging employment."

That was debate on another bill which simply intended to extend rights to workers. It has been 3 years since that bill has been enacted and there is a consensus in this country that providing workers with advanced notice when a plant is about to close is sound, reasonable policy and has caused little, if any, difficulty.

Business Week, not published by the AFL–CIO, said this about that plant closing bill: "It turned out to be the disaster that never happened."

Likewise, after the eventual passage of this bill, we will find that labor and management are working together very effectively and the rhetoric we have heard and will hear today about the negative effect of the bill will be understood as the exaggeration that it is.

My colleagues, the most fundamental right of all working people is the ability to withhold their labor. That is a right that America's labor laws guarantee or at least purport to guarantee. The only reason we are here today is because the promise of our national labor laws is not being kept.

Let me read to Members what the National Labor Relations Act says with regard to strikes. "Nothing in this act shall be construed to impede or diminish in any way the right to strike." But just as sure as night follows day, anyone who strikes and knows they face losing their job if they do so has had that right impeded.

So the hard fact is, and what brings us to the floor today is, the words of America's law of the land do not ring true. To America's workers, the promise that they will not be impeded when they strike is a false one. So we are here today to foster respect and fairness in labor-management relations.

We are here today to simply extend to workers the right to withhold their labor.

Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 262, nays 157, not voting 14, as follows:

[Roll No. 209]

YEAS—262

Abercrombie	Boxer	Costello
Ackerman	Brewster	Cox (IL)
Alexander	Brooks	Coyne
Anderson	Browder	Cramer
Andrews (ME)	Brown	Darden
Andrews (NJ)	Bruce	Davis
Andrews (TX)	Bryant	de la Garza
Annunzio	Bustamante	DeFazio
Anthony	Byron	DeLauro
Applegate	Campbell (CO)	Dellums
Aspin	Cardin	Derrick
AuCoin	Carper	Dicks
Bacchus	Carr	Dingell
Barnard	Chapman	Donnelly
Beilenson	Clay	Dooley
Bennett	Clement	Dorgan (ND)
Berman	Coleman (TX)	Downey
Bevill	Collins (IL)	Durbin
Bilbray	Collins (MI)	Dwyer
Bonior	Condit	Dymally
Borski	Conyers	Early
Boucher	Cooper	Eckart

Edwards (CA)
Edwards (TX)
Engel
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gordon
Gray
Guarini
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horn
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennelly
Kildee
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moody
Moran
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Ray
Reed
Richardson
Rinaldo
Roe
Roemer
Rostenkowski
Rowland
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Savage
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Washington
Waters
Waxman
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Young (AK)

NAYS—157

Allard
Archer
Armey
Baker
Ballenger
Barrett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boehner
Broomfield
Bunning
Burton
Callahan
Camp
Campbell (CA)
Chandler
Clinger
Coble
Coleman (MO)
Combest
Cox (CA)
Crane
Cunningham
Dannemeyer
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Ewing
Fawell
Fields
Fish
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Herger
Hobson
Holloway
Hopkins
Horton
Houghton
Hunter
Hyde
Inhofe
Ireland
Jacobs
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McMillan (NC)
Meyers
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison
Myers
Nichols
Nussle
Oxley
Packard
Paxon
Porter
Pursell
Quillen
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Santorum
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Slaughter (VA)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stump
Sundquist
Taylor (NC)
Thomas (CA)
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Walsh
Weber
Weldon
Wolf
Wylie
Young (FL)
Zeliff
Zimmer

NOT VOTING—14

Atkins
Coughlin
Dixon
Geren
Jefferson
Kennedy
Kleczka
Lowery (CA)
Matsui
Michel
Rose
Saxton
Weiss
Yatron

□ 1138

Mr. HOLLOWAY and Mr. SCHAEFER changed their vote from "yea" to "nay."

Mr. DAVIS changed his vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the resolution.

The question was taken; the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 265, nays 153, not voting 15, as follows:

[Roll No. 210]

YEAS—265

Abercrombie
Ackerman
Alexander
Anderson
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bacchus
Barnard
Beilenson
Bennett
Berman
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Boxer
Brewster
Brooks
Browder
Brown
Bruce
Bryant
Bustamante
Byron
Campbell (CO)
Cardin
Carper
Carr
Chapman
Clay
Clement
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Costello
Cox (IL)
Coyne
Cramer
Darden
Davis
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (TX)
Engel
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray
Guarini
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horn
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennelly
Kildee
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowey (NY)
Luken
Manton
Markey
Martinez
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Miller (OH)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moody
Moran
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Reed
Regula
Richardson
Rinaldo
Roe
Roemer
Rostenkowski
Rowland
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Savage
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
Staggers
Stallings
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Washington
Waters
Waxman
Wheat
Whitten
Wilson
Wise
Wolpe
Wyden
Yates
Young (AK)

NAYS—153

Allard
Archer
Armey
Baker
Ballenger
Barrett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehner
Broomfield
Bunning
Burton
Callahan
Camp
Campbell (CA)
Chandler
Clinger
Coble
Coleman (MO)
Combest
Cox (CA)
Crane
Cunningham
Dannemeyer
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Ewing
Fawell
Fields
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Herger
Hobson
Holloway
Hopkins
Houghton
Hunter
Hyde
Inhofe
Ireland
Jacobs
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Long
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McEwen
McMillan (NC)
Meyers
Miller (WA)
Molinari
Moorhead
Morella
Morrison
Myers
Nichols
Nussle
Oxley

Packard	Roukema	Stump
Paxon	Santorum	Sundquist
Porter	Schaefer	Taylor (NC)
Pursell	Schiff	Thomas (CA)
Quillen	Schulze	Thomas (WY)
Ramstad	Sensenbrenner	Upton
Ravenel	Shaw	Vander Jagt
Ray	Shays	Vucanovich
Rhodes	Shuster	Walker
Ridge	Skeen	Walsh
Riggs	Slaughter (VA)	Weber
Ritter	Smith (OR)	Weldon
Roberts	Smith (TX)	Wolf
Rogers	Snowe	Wylie
Rohrabacher	Solomon	Young (FL)
Ros-Lehtinen	Spence	Zeliff
Roth	Stearns	Zimmer

NOT VOTING—15

Andrews (ME)	Kleczka	Saxton
Coughlin	Lowery (CA)	Stark
Dixon	Matsui	Weiss
Jefferson	Michel	Williams
Kennedy	Rose	Yatron

□ 1157

The Clerk announced the following pair:

On the vote:

Mr. Kleczka for, with Mr. Lowery of California, against.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTION 173

Mr. COMBEST. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of House Resolution 173.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Texas?

There was no objection.

WORKPLACE FAIRNESS ACT

The SPEAKER pro tempore. Pursuant to House Resolution 195 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5.

□ 11:59

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill [H.R. 5] to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, with Mr. LEVIN of Michigan in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Michigan [Mr. FORD] will be recognized for 30 minutes; the gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 30 minutes; the gentleman from Washington [Mr. SWIFT] will be recognized for 15 minutes; the gentleman from Pennsylvania [Mr. RITTER] will be recognized for 15 minutes; the gentleman from New Jersey [Mr. ROE] will be recognized for 15 minutes; and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 15 minutes.

□ 1200

The Chair recognizes the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, H.R. 5, the Workplace Fairness Act, is the most important labor relations bill to be taken up by the Congress in more than a decade. It has one purpose: to restore to America's working people their most fundamental employment right—the right to withhold their labor without fear of retaliation.

H.R. 5 is simple and direct. It makes it an unfair labor practice for an employer to respond to a lawful economic strike by discharging and permanently replacing the strikers with other workers. It also makes it an unfair labor practice for an employer to discriminate against the strikers with respect to other employment terms and benefits.

If H.R. 5 is not enacted, the survival of collective bargaining in the United States cannot be assured. More and more employers each year are turning to the threat or use of permanent replacements as a way to coerce and intimidate union workers into concessionary contracts, or as a way to bust the union when the employees are pushed too far and are forced to strike.

On Monday, another such case was reported in the Daily Labor Report—a Pepsi-Cola bottler replaced its 85 union employees with 113 nonunion workers and got rid of the union when the replacements voted to decertify it.

Collective bargaining is being killed by employers who have found a way to regain unilateral control of their work forces and deny their employees a voice.

The law in its current unfortunate state permits employers like Greyhound and the New York Daily News to advertise for replacement workers before negotiations even begin, to bargain to impasse without delay and implement a humiliatingly low final offer, and then permanently replace the strikers in the first hour of a strike. Within a year, the strikers are prohibited from voting in an NLRB election and the union can be decertified, that is to say, destroyed. If we do nothing, our system of collective bargaining will be reduced to a system of collective begging.

The Committee on Education and Labor has studied this issue for more than 3 years, and we are confident that the bill we bring before you today is fair and deserves your support. Let us join West Germany, Japan, Canada, Sweden, France, and the other industrial giants of the world that value collective bargaining as a way to spur cooperation and productivity and prohibit the destructive practice of punishing workers who exercise their right to strike. Let us not praise unions in Poland and Czechoslovakia and strangle them in the United States. Let us pass H.R. 5.

MACKAY RADIO AND THE TRANS WORLD AIRLINE DECISIONS

The two Supreme Court decisions H.R. 5 is designed to reverse are *NLRB* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938) and *Trans World Airlines* v. *Independent Federation of Flight Attendants*, 489 U.S. 426 (1989).

Mackay Radio declares that an employee lays his job on the line when he goes out on an "economic Strike" over hours and wages and other terms and conditions of employment. He can't be fired, but he can be replaced, and permanently so. It matters little to the worker who loses his job whether he is fired, or whether he is replaced. What matters is the loss of the paycheck, the loss of his job, the loss of his union.

It is obvious to every working man and woman that this discharge and replacement do "interfere with or impede or diminish in any way the right to strike" in violation of section 13 of the act. Who can seriously argue that when the employer discharges the striker, he does not "interfere with, restrain or coerce" the workers' rights guaranteed in section 7 to "engage in concerted activity for mutual aid or protection?" The contrary decision of the Supreme Court in the Mackay Radio case is wrong, and came about in an almost off-hand way. Here is what happened.

Mackay Radio & Telegraph Co., like the better known Western Union, was engaged in the transmission of telegraph, radio, and cable communications, both at home, abroad, and to ships at sea. In 1934 before the Wagner Act, many of the Mackay Radio employees joined the American Radio Telegraphists' Association [ARTA]. The 60 employees at the San Francisco office were especially militant in this union.

In June 1934, ARTA began negotiating for a collective bargaining agreement with Mackay Radio. Negotiations dragged on and on, throughout the summer months. In September 1935, the union took a strike vote, and thereafter announced that it would call a strike for midnight, October 4, 1935, if no agreement was reached at the bargaining table.

In anticipation of the strike, Mackay Radio recruited 11 nonunion employees from its offices in New York, Chicago, and Los Angeles to transfer to the San Francisco office. The company promised them permanent jobs there.

The strike was called on Friday, October 4. All the regular employees in

San Francisco, including low-level supervisors, responded to the strike call. The strike fizzled elsewhere and was called off.

On Monday, October 7, all strikers returned to their jobs, except 11 in San Francisco, who were replaced by the outsiders from New York, Chicago, and Los Angeles. The company selected these 11 with care. One was a supervisor. Five were the least competent employees, with blemished work records. The five others were all good workers, but active union leaders. This is why they were selected for the blacklist.

Then, six of the replacement workers decided to return to their former homes; and the company took back the supervisor, the five incompetents, but not the five union activists.

The National Labor Relations Act became effective on July 5 of that year, and on October 15 ARTA filed unfair labor practice charges with the Labor Board alleging that the discrimination against the five, based on their union leadership, violated their rights under section 7 to "join, form and assist unions," and to engage in "concerted activity" for "mutual aid or protection."

The NLRB held for the union, and wrote that:

> The inference seems clear that the respondent's [Mackay's] officials readily perceived that circumstances had provided them with an excellent opportunity to rid (itself) of the leaders of the Local which had just caused it to pass through a costly strike and it did not fail to make the most of the opportunity. And in thus taking advantage of that opportunity the respondent (Mackay) committed a violation of the Act. 1 NLRB Reports at 218 (1936).

The NLRB refused to decide whether or not Mackay had a right to retain the permanent strike replacements. The Board wrote that the "preference to the strikebreakers" might violate the Act because the claim of the five discharged workers to their old jobs "is greater than that of the strikebreakers." But the Labor Board concluded that "since we find that a decision on the point is not necessary to the final judgment in this case we will not decide the matter." 1 NLRB Report at 216 (1936).

Mackay Radio refused to replace the five union activists it had discharged, and the NLRB took the case to the Court of Appeals for the Ninth Circuit. That court held that the Labor Act was unconstitutional, and therefore did not reach or decide whether it was lawful under the act to single out union leaders for discharge. Nor did that court decide whether it was lawful to keep replacements after the strike ended.

The National Labor Relations Board then took the case to the Supreme Court. The Supreme Court by then had upheld the constitutionality of the Labor Act, and the only issue briefed or argued by the parties was whether it was lawful to discriminate in employment opportunities because of heavy involvement in a union. The Supreme Court agreed with the Labor Board that it was unlawful for Mackay Radio to "keep out certain of the strikers" for the "sole reason that they had been active in the Union." 304 U.S. at 346. In like vein, the Supreme Court more recently held that an employer may not discipline union officials more severely than other union employees for participating in an unlawful work stoppage. *Metropolitan Edison Co.* v. *NLRB*, 460 U.S. 693 (1938).

But the Supreme Court did not stop there. The Labor Board expressly refused to decide whether Mackay Radio could retain the strike replacements in preference to the strikers. This issue was not decided by the Court of Appeals. It was not raised by the parties before the Supreme Court. But, despite all this, the Court, sua sponte wrote that, "it was not an unfair labor practice for Mackay to replace the striking employees with others in an effort to carry on the business," and although section 13 provides that the Act "is not to be construed so as to interfere with or impede or diminish in any way the right to strike":

> [I]t does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them. 304 U.S. at 345-346.

This ill-considered *dicta* has created the havoc in collective bargaining that H.R. 5 is designed to correct.

But there is more. *Trans World Airlines, Inc.* v. *Independent Federation of Flight Attendants*, 489 U.S. 426 (1989) took a giant step farther away from Congress' efforts to encourage the practice and procedure of collective bargaining. Under TWA, individuals who cross the picket line can get any vacant job, and keep it at the strike's end, no matter how low they might rank on the seniority scale. This is what happened.

The contract with TWA typically provided that flight attendants with greatest seniority would have first choice on vacant job assignments, vacant flight schedules, and vacant bases of operations. For example, should a job vacancy appear at the highly desirable San Francisco base of operations, the most senior qualified flight attendant who bid on the vacancy would be entitled to it. Should the flight to Tokyo become vacant, it would go to the most senior applicant for that schedule.

After 2 years of unsuccessful bargaining over wages and working conditions, the flight attendants went on strike on March 7, 1986. Earlier, TWA had warned that it would continue operations with permanent replacements and "crossovers," that is, union members who "crossed over" the picket line. TWA also warned that new employees and "crossovers" would be permitted to pick any vacant base of operation and any vacant flight assignment—and keep them when the strike ended, regardless of seniority.

This opened the door wide to junior flight attendants—if they broke ranks with their brother and sister employees—to choice assignments which otherwise went to others with 10 or 15 years of seniority. The incentive bore fruit.

During the 72-day strike, approximately 5,000 flight attendants remained on strike, some 1,280 flight attendants "crossed over" the picket lines, and some 2,350 new flight attendants were hired. When the strike ended, TWA recalled only the 197 most senior strikers to fill the "beginning jobs, not then occupied by the "crossovers" and new hires. Some 4,000 strikers are still out of work, waiting to be recalled.

The Supreme Court saw nothing wrong with this, because of the guiding precedent of Mackay Radio. TWA's decision to give the most desirable jobs to junior "crossovers" and not to the more senior full-term strikers "had the effect of encouraging prestrike workers to remain on the job during the strike or to abandon the strike and return to work before all vacancies were filled." But, wrote Justice O'Connor for the Court, this was only "an effect of the exercise of TWA's peaceful economic power, a power that the company was legally free to deploy once the parties had exhausted the private dispute resolution mechanisms of the Railway Labor Act."

Justice Brennan, joined by Justice Marshall, dissented because this kind of discrimination on the basis of union activity is "inherently destructive of the right to strike as guaranteed by both the Railway Labor Act and the National Labor Relations Act."

The TWA decision can only deepen the reluctance of workers to strike. They may be willing to give up their paychecks for a few weeks, or even months, in support of bargaining demands they believe are just. But it is an entirely different ball game when hard-earned seniority is put on the line. The stakes are greater; the risk almost unbearable. Clearly, the threat of seniority suicide "interferes with, impedes and diminishes" the congressionally-guaranteed right to strike. And without the right to strike, the process of collective bargaining becomes nothing more than a process of collective begging.

The TWA decision compounds the damage earlier done by its "godfather," Mackay Radio, and is the second of the two Supreme Court decisions we seek to repudiate with enactment of H.R. 5.

SUPREME COURT DECISIONS DISTINGUISHING OR APPLYING THE MACKAY RADIO DOCTRINE: MASTRO PLASTICS, ERIE RESISTOR, GREAT DANE TRAILERS, FLEETWOOD TRAILER, BELKNAP, AND TWA

We have discussed the background and holdings in Mackay Radio and Trans World Airlines. There are five additional Supreme Court decisions which have been featured in the debate and discussion during the committee hearings. They are *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270 (1956); *NLRB* v. *Erie Resistor Corp.*, 373 U.S. 221 (1963); *NLRB* v. *Great Dane Trailers, Inc.*, 388 U.S. 26 (1967); *NLRB* v. *Fleetwood Trailer Co.*, 389 U.S. 375 (1967); and *Belknap, Inc.* v. *Hale*, 463 U.S. 491 (1983).

A. THE EARLIER DECISIONS SOUGHT TO AMELIORATE THE HARSHNESS OF THE MACKAY RADIO DOCTRINE

First, Mastro Plastics was the first of these decisions.

It holds that employees who strike to protest an employers' unfair labor practice—unfair labor practice strikers—can get their jobs back on demand.

The 76 employees at Mastro Plastics were well satisfied with their membership in the Carpenters Union. But their employer thought they should shift their allegiance to Local 318 of the Paper Mill Workers. He told his employees that "those refusing to do so would be out."

Despite the employer's threats, the workers remained loyal to their chosen Carpenters Union. Matters came to a head when the employer discharged an employee "because of his support of the Carpenters and his opposition to Local 318." The other employees promptly walked out in protest, despite a conventional no-strike clause in their contract.

The employer hired replacements, and then denied reinstatement to the strikers, on the theory that the employees had forfeited their employment rights because of the illegal strike. Section 8(d) of the act supports the employer here, because of its provision that a worker who engages in an illegal strike "shall lose his status as an employee." Nevertheless, the Supreme Court emphasized the employer's unfair labor practices as precipitating the strike and went on to hold that: "under these circumstances the striking employees do not lose their status as employees and are entitled to reinstatement with backpay even if replacements for them have been made."

The situation differs from that in Mackay Radio, said the Court, because a strike protesting an unfair labor practice warrants greater protection than a strike over economic benefits.

Second, Erie Resistor is the second case after Mackay Radio.

It holds that it is an unfair labor practice for an employer to give 20 years super seniority to his strike replacements, even when the promise of super seniority, as in Mackay Radio, is necessary to protect and continue the business.

Erie Resistor was unable to get strike replacements until it offered 20 years super seniority for purposes of layoff and recall. Then, many junior employees began to cross over the picket line. The Labor Board held that the offer of super seniority violated the rights guaranteed to workers under the act because it is a form of discrimination extending far beyond the employer's right of permanent replacement sanctioned by Mackay.

The Supreme Court affirmed. It noted that offering super seniority to replacements deals a crippling blow to the strike effort for two reasons. First, it gives employees with low seniority the opportunity to obtain the job security which, ordinarily, only long years of service can bring. Conversely, this new status seriously dilutes the accumulated seniority of older workers. Second, super seniority renders future bargaining difficult, if not impossible, by dividing employees into two camps; those who stayed with the union and those who returned before the end of the strike and thereby gained extra seniority.

The Court refused to apply the Mackay Radio doctrine because the employer's interest in continued production does not justify the increased encroachment on these rights resulting from the super seniority agreement.

The Supreme Court sees its role as one of balancing interests, and this time the Court came down on the side of the worker.

The Court also came down on the side of the worker in the next two decisions, Great Dane Trailers, and Fleetwood Trailers.

Third, during a strike at Great Dane Trailers, the employer gave accrued vacation benefits to workers who crossed the picket line in the form of cash payments, but denied the accrued vacation benefits to strikers, even though they had earned the benefits by their past employment.

The Supreme Court held that this was discrimination in its simplest form; and that the labor act prohibits this type of discrimination, which targets participation in concerted activities such as a legitimate strike.

Great Dane Trailers takes on additional significance because of its holding concerning the burden and degree of proof necessary to prove that an employer discriminated to discourage union membership and activities. Ordinarily, wrote the Court, a finding of a violation turns on whether the discriminatory conduct was motivated by an antiunion purpose. If it was motivated by a legitimate business purpose, it would not be a violation. But the Court added:

> Some conduct, however, is so inherently destructive of employee interests that it may be deemed proscribed without need for proof of an underlying improper motive.

On the other hand, when the resulting harm to employee rights is comparatively slight, and a substantial and legitimate business end is served, the employers' conduct is prima facie lawful and an affirmative showing of motivation must be made.

This prompted some commentators to suggest the end of Mackay Radio on the theory that the use of permanent replacements is inherently destructive of employee interests and therefore automatically proscribed. In contrast, the use of temporary replacements against strikers is comparatively slight and therefore unlawful only if the employer fails to come forward with evidence of legitimate and substantial business justification.

Fourth, in Fleetwood Trailers, the employer hired permanent replacements during a strike, and refused to reinstate the strikers when vacancies occurred thereafter.

The Court held that a striker, even when replaced, remains an employee within the meaning of the statute, and consequently has priority rights to the job over a stranger, if and when an opening occurs at strike's end. This is so because the effect of the employer's refusal to reinstate strikers is to discourage employees from exercising their rights to organize and to strike guaranteed by sections 7 and 13 of the act. The Court then applied the rationale of Great Dane Trailers and ruled that the employer has violated the act, as it had failed to prove legitimate and substantial business justifications for its refusal to take back the former strikers.

B. THE CHANGE OF COURT PERSONNEL AND THE CHANGE OF DIRECTION TIGHTENING THE SCREWS ON MACKAY RADIO

Great Dane Trailers and Fleetwood Trailers were decided in the heyday of the Warren Court. It was anticipated that the inherently destructive, and the substantial business justification tests would dethrone Mackay Radio. Surely, hiring permanent replacements is inherently destructive of the right to strike. Surely, even if hiring permanent replacements has only a comparatively slight adverse effect, the employer would have difficulty in proving a substantial business justification for hiring permanent replacements instead of using the more traditional techniques of coping with a strike. But this was not to be.

First, Belknap, Inc. versus Hale was decided by the Burger Court, and held that if the employer went back on his promise of a permanent job, the replacements hired during the strike could sue for damages in the local State courts.

The Court also ruled that "the refusal to fire permanent replacements because of commitments made to them in the course of an economic strike satisfies the requirements of NLRB versus Fleetwood Trailer Co. that the em-

ployer have a 'legitimate and substantial justification' for his refusal to reinstate strikers."

Belknap presents a scenario all too common in today's labor-management relations. The union and company began negotiations for renewal of the collective-bargaining agreement, but could not reach agreement. The union called a strike, and Belknap put ads in the local newspapers:

Permanent Employees Wanted
Belknap, Inc.

Openings available for qualified persons looking for employment to permanently replace striking warehouse employees. Minimum starting rate $4.55 per hour. Top rate $5.85, depending on skill, ability, and experience.

A large number of people flocked to the plant and signed individual employment contracts reciting that:

I, the undersigned, have been employed by Belknap, Inc. at its Louisville, Kentucky, facility as a regular full time permanent replacement to permanently replace ——— in the job classification of ———.

Belknap then made a mistake of law. It granted a wage increase to those who stayed on the job, higher than the wage increase it had offered the union. This is an unfair labor practice, and the strike then became an unfair labor practice strike. Under Mastro Plastics the strikers could get their jobs back on demand. Belknap thus was forced to rehire the strikers, and he fired the cross-overs who had been promised permanent jobs. They then filed suit for damages in the State court, and the Supreme Court ruled that Federal law did not preempt the State cause of action. Belknap puts the employer in a box. If he hires permanent replacements to break a strike, he cannot reach a settlement agreement which includes taking back the strikers. Under Belknap he would then face a lawsuit before a State jury. On the other hand, if he refuses to take back the strikers no matter what, they will have nothing to lose and will prolong the strike at all costs. Thus, Belknap tightens the screws of Mackay Radio.

Second, the Trans World Airlines case upheld the right of an employer to offer strike replacements permanent super seniority in jobs previously filled by those on strike. It has been discussed previously. Suffice it to say here that the decision strengthens Mackay Radio's pressure on employees to forgo their right to strike, expands Mackay Radio to reach cases under the Railway Labor Act, and undermines the Warren Court decision in Erie Resistor prohibiting offers of super seniority to those who cross the picket line.

THE RIGHT TO STRIKE IS INTEGRAL TO THE SUCCESS OF COLLECTIVE BARGAINING

Back in 1935 when Congress passed the Wagner Act, our object was to provide employees with a meaningful role in working out their terms and conditions of employment with their employer. Congress saw an inequality in bargaining power, and set about to correct it. The solution was to confer upon employees a series of protected rights—to join, form, and assist unions; to bargain collectively through unions of their own choosing; to engage in concerted activities for mutual aid and protection; and, when necessary, to strike in support of their bargaining positions.

This right to strike was and is the keystone of our national labor relations program. If employees cannot mount a meaningful strike threat, the Federal labor policy does not work without it. There is no incentive for the employer to make concessions or reach agreement. From the first, it has been understood that the right to strike is essential to the give and take of true collective bargaining. Without this threat, negotiations degenerate into a sterile charade.

The courts have understood the need for strike power since the very beginning. Indeed, the square holding of the Mackay decision was that an employer violates section 8(a)(3) of the Labor Act when he discriminates against his employees because of their role in leading a strike.

Strike power is the go power of collective bargaining. The notion has never been better expressed than by Justice William Brennan in *NLRB* v. *Insurance Agents' International Union*, 361 U.S. 475 (1960). The union committee was bargaining in good faith at the bargaining table, but away from the bargaining table the insurance agents brought pressure on their employer with what they called a "Work Without a Contract" policy. This included a refusal to solicit new business, reporting late at district office meetings, and engaging in mass demonstrations at the company's home office.

The Labor Board concluded that the union breached its obligation to bargain in good faith when it utilized these harassing tactics; the very antithesis of the reasoned discussion it was duty bound to follow. The Supreme Court thought otherwise.

Justice Brennan first concluded that these harassing tactics were not protected under the act, and that the employer, if so minded, could discharge all the participants. But, the Court concluded, there was no violation of the duty to bargain. Collective bargaining, he wrote, cannot be equated with an academic collective search for truth, and consists of far more than argument, persuasion, and the free interchange of views. Justice Brennan concluded:

The system has not reached the ideal of the philosophic notion that perfect understanding among people would lead to perfect agreement among them on values. The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized. * * * One writer recognizes this by describing economic force as "a prime motive power for agreements in free collective bargaining."

Our concept of collective bargaining, as Justice Blackmum put it in *First National Maintenance Corp.* v. *NLRB*, 452 U.S. 666 (1981), is premised on the belief that collective discussions backed by the parties' economic weapons will result in decisions that are better for both management and labor and for society as a whole.

The Mackay Radio dictum undermines the employees' principal economic weapon and blocks the road to meaningful, successful collective bargaining. Mackay Radio should be reversed by enacting H.R. 5.

MACKAY RADIO INTERFERES WITH, IMPEDES AND DIMINISHES THE RIGHT TO STRIKE

Mackay Radio authorizes the employer to replace strikers permanently. True enough, somewhere down the road the replacements might decide to take themselves elsewhere. If so, the striker will have priority in filling the vacancy, unless he has found another job. See *NLRB* v. *Fleetwood Trailer Co.*, 389 U.S. 375 (1967). But this is small solace to the striker whose job is terminated here and now.

The notion that anyone should recognize a fundamental difference between an employer's decision to discharge a striker and an employer's decision to "permanently replace" a striker ignores practical reality. In both instances, the employee is out of work because he exercised his right to strike.

Prof. Paul Weiler of the Harvard Law School wrote that while the law might recognize a distinction:

The employee may be excused for not perceiving a practical difference as far as his rights under section 7 are concerned. The bleak prospect of permanently losing his job is obviously likely to chill an employee's willingness to exercise his statutory rights to engage in "concerted activities" 98 Harv. L. Rev. 351, 389–390 (1984).

Prof. George Schatzki of the University of Connecticut adds that the distinction between discharge and "permanent replacement" is meaningful even when looked at from an employer's perspective:

The distinction between permanent replacement and discharge can hardly mean anything to the displaced employee; and to the employer it can mean little more. * * * As a practical matter, in almost all cases the *Mackay* doctrine—despite its articulated distinction—is an invitation to the employer, if he is able, to rid himself of union adherents and the union. 47 Texas L. Rev. 378, 383 (1969).

One need look no further than the Greyhound strike to refute any suggestion that being replaced is somehow different in kind from being fired.

At Greyhound, approximately 9,300 employees went on strike rather than accept the company's contract proposal. Three weeks before the strike

began the company advertised throughout the United States for permanent replacements. When the strike began, the company wrote all the strikers, referred to the "TWA Supreme Court decision in 1989," and told them "if you abandon the strike and return to work before a contract is reached you will not be fired nor laid off to make room for a more senior driver returning at a later date."

When the union finally made an unconditional offer to return to work, the company replied that at best, no more than 600 jobs were available. For the other thousands of workers, being fired or permanently replaced for choosing to strike amounted to the same thing: a career destroyed, financial ruin, and untold personal hardship.

THE MACKAY DOCTRINE UNDERMINES THE PROCESS AND PROCEDURE OF COLLECTIVE BARGAINING

Lane Kirkland, president of the AFL–CIO began his testimony before our committee with the statement that the Mackay doctrine "poisons the development of healthy and mutually beneficial collective bargaining relationships." This is so, said Mr. Kirkland, because—

Mackay allows employers to convert a dispute over the terms of a particular collective bargaining agreement into a dispute over the future status of the union and over the collective bargaining relationship itself.

Lynn R. Williams, president of the United Steelworkers of America, echoed this thought when he testified that:

Mackay can prolong strikes and defeat the NLRA's objective of securing prompt resolution of collective bargaining disputes. Once an employer hires permanent replacements, the ongoing negotiations become vastly more complicated. To the issues that already divide the parties, there is now added a dispute over whether the employer will take back the strikers in preference to the permanent replacements. Parties who could have reached agreement on the issues they started out to negotiate, founder over the new issues that Mackay necessarily injects into the bargaining. Agreements are lost or delayed; industrial strife proliferates.

Richard L. Trumka, president of the United Mine Workers of America, characterized the Mackay doctrine as a cancer destroying free collective bargaining:

By raising the stakes of what should be a limited conflict over limited objectives, the employment of permanent strike replacements transforms an economic strike—a strike over the terms and conditions which will govern the strikers' employment when they resume work—into a life or death struggle which can only be settled by the economic destruction of one of the parties.

The experience of these three labor leaders, who live with the problem of Mackay Radio every day of the year, is supported by all the empirical evidence.

A. DURING THE ORGANIZATIONAL CAMPAIGN

Collective bargaining begins when employees exercise their right guaranteed by section 7 of the act to "form, join, and assist unions." But all too often the employer heads off the organizing campaign with a statement like this:

If I am required to bargain and I cannot agree, there is no power on earth that can make me sign a contract with this Union, so what will probably happen is that the Union will call a strike. I will go right along running this business and replace the strikers. They will lose all their benefits. Strikers will draw no wages, no unemployment compensation and be out of a job.

See *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962). Such statements are permitted by the Labor Act as long as the employer remembers to add at the end that he must take back the strikers if and when strike replacements leave and create vacancies. *Baddour, Inc.*, 303 NLRB No. 36 (May 31, 1991).

Frank McCulloch, Chair of the NLRB for 15 years, notes that such Mackay Radio warnings played a prominent role in almost all the election files he has. Texas Law Prof. Julius Getman testified that in virtually all of the 35 union organizing campaigns he studied, the employer announced that it would bargain tough so that employees would have to strike to gain substantial benefits.

President Lynn Williams of the Steelworkers Union summed it all up when he said "vast numbers of employees forego unionizing altogether because of Mackay" because:

Workers will not unionize if they fear that the consequence will be permanent job loss. And employers exploit that fear. In every organizing drive, the employer emphatically warns employees of its right to permanently replace them if they strike. It should not be surprising that employees who would otherwise favor unionization will shy away in the face of this danger.

B. AT THE BARGAINING TABLE

Should a majority of the employees designate or select a union as their bargaining representative, the employer is required by section 8(a)(5) of the act to bargain with the union in good faith. But once again, Mackay Radio can make a charade out of what should be a serious discussion of wages, hours, and other terms and conditions of employment. Without the right to strike, collective bargaining degenerates into collective begging.

In 1991, the United Auto Workers asked its international staff representatives across the country to respond to a union survey about the impact of employer use or threatened use of striker replacements since the mid-1980's. Twenty of the responses discussed the "impact of employer's threat on bargaining." Eighteen of these 20 responses reported "accepting concessions or worked without a contract."

Why were 18 of the 20 UAW locals unable to reach agreement at the bargaining table? Professor Getman provides one possible answer with his testimony that:

Mackay makes it tempting for employers to bargain not to reach an agreement but rather to force a strike so that it can permanently rid itself of union supporters and very possibly the union itself.

C. DURING THE STRIKE

Should the workers go on strike, as is their right under sections 7 and 13 of the Labor Act, the use of Mackay Radio permanent replacements will, in the words of Lane Kirkland, serve only to poison the situation. All the evidence—Greyhound, International Paper, Continental Air, Phelps Dodge, and on, and on, and on serves only to prove that the growing use of permanent replacements exacerbates the length, intensity, and bitterness of strikes. It in no way encourages the practice and procedure of collective bargaining. Once an employer hires permanent replacements, the ongoing negotiations become vastly more complicated. To the issues already dividing the parties, there is now added a dispute over whether the employer will take back the strikers in preference to the permanent replacements. When all other issues are resolved, the strike continues over the permanent replacement issue and can reach the point of no return.

Witness the recent strike at the New York Daily News where the use of replacements turned the strike white hot. The paper advertised for replacements in anticipation of the strike and gave them 4 weeks training before the strike even started. The replacements worked for less than the wage paid to the strikers, sometimes half as much. These circumstances sent the signal that this was a fight to the end. Strikers, many with a lifetime of employment with the Daily News, knew they had little chance of finding comparable work elsewhere. They knew that hundreds of workers would lose their jobs anyway as part of the settlement to drive down production costs and that many more would be ousted if management insisted on retaining the replacements in a settlement to keep the paper open. The strikers no longer felt a stake in the paper's future, and their theme became "settle, sell, or sink." This is exactly the situation the 1935 National Labor Relations (Wagner) Act was designated to eliminate from the American labor scene.

THE REPEAL OF MACKAY RADIO WILL NOT CAUSE STRIKES TO PROLIFERATE

The suggestion has been advanced that if workers do not lay their jobs on the line when they go on strike; if workers can strike at will with a guaranty of their job back on demand, American workers will abuse their right to strike to the detriment of their company and the public at large.

But American unions are not strike-happy, and for good reason. As Lane Kirkland put it, a strike is "not a trip to Disneyland." Moreover, he testified, "Strikers recognize that their eco-

nomic interest are bound up with the employer's economic interest. They know that if they cause their employer long-term harm, they cause themselves long-term harm."

Owen Bieber, president of the United Auto Workers, grew indignant at the suggestion that enactment of H.R. 5 would encourage strikes, would somehow make work stoppages risk-free. He testified that:

These arguments totally ignore the fact that under H.R. 5 workers would continue to lose their paychecks when they go out on strike. It is simply insulting to workers to suggest that the loss of their paychecks is "little to lose" or "risk-free." I can only assume that persons making these arguments haven't missed too many paychecks.

In our union, a strike can only be authorized where it is approved in a secret ballot election by a two-thirds vote. We require a two-thirds vote because, as inconvenient as a strike may be to the public, it can cause even greater inconvenience to the striker's family. Let me assure you that for the average worker, the prospect of missing a paycheck or several paychecks is a very serious matter. Ordinary workers don't have stock portfolios or certificates of deposit to tide them over.

A majority of states deny unemployment benefits to workers in labor disputes. And the federal government denies food stamps and welfare benefits to a striker's family, even if the family otherwise qualifies. Strike benefits from unions are small or non-existent. And it is usually difficult for strikers to find other jobs because most employers won't hire workers who are on strike at another company. Thus, it is simply nonsense to suggest that workers will somehow become "strike happy" if H.R. 5 is enacted.

Captain Duffy, of the Air Line Pilots Association, concluded his eloquent testimony in the Senate with these observations:

One final point which I cannot emphasize strongly enough; it is that eliminating the permanent replacement option is not likely to result in any rash of strikes or labor turmoil to the detriment of the public. Quite the contrary, employees in our industry are not "strike-happy." Pilots especially are cautious and risk-averse by nature; after all, those are the qualities you want in a pilot. Moreover, pilots—indeed, virtually all employees who are subject to the RLA—are now operating in a deregulated environment. They know full well that their jobs depend on the ability of their companies to compete in the marketplace. They also know full well that their wages and working conditions are tied to the economic health of their employers. And, lastly, they know full well that a strike which deprives their company of market share or drives the company into bankruptcy will not be in their interest. As much now as ever, pilots and other transportation employees want to settle their differences with their employer through bargaining, rather than through strike action.

A strike always has been a weapon of last resort; if anything, airline deregulation has made that even clearer. In fact, there have been many situations in the airlines and in other industries where workers were most reluctant to go on strike, and it was management that stonewalled and maneuvered to force the workers into a strike, planning all along to use the strike as an opportunity to replace workers and drive their union from the property.

Elimination of the permanent replacement option as proposed in S. 2112 will not be destabilizing; rather it is the continued use of that option or the threat of its use which is far more likely to result in intolerable conflict and confrontation.

SECTION 8(a)(5) AFFORDS NO PROTECTION WHEN EMPLOYERS FORCE A UNION TO STRIKE WITH UNACCEPTABLE BARGAINING DEMANDS AND THEN "BUST" THE UNION WITH PERMANENT REPLACEMENTS

Back in July 1988 when hearings first began on what is now H.R. 5, James P. Melican, vice president of the International Paper Co., initiated an attack on the pending legislation which has been repeated time and again ever since. Here is what Mr. Melican said:

As you know, when employees are organized in a bargaining unit, the law requires that employers bargain in good faith on certain defined matters with the representatives of that unit. I suggest to you that, if the company's preconceived intent was in fact to "bust" the union, it would not have been bargaining in good faith, and would under existing law be subject to an unfair practice charge. In short, *if a deliberate effort on the part of an employer to destroy its employees' union were the problem, no change in the law would be needed.*" (Italic supplied.)

This contention is currently repeated by the minority of our committee with its assertion that should employers use the Mackay weapon to "bust" unions by refusal to bargain in good faith, "they will be ordered to reinstate any striking employees, displacing any Mackay replacements, and/or to bargain in good faith."

The minority then hastily adds that "the NLRB has been realistic enough to recognize that present economic realities may require 'hard bargaining' by employers in order to remain in business."

Aye, there's the "rub": to distinguish between lawful hard bargaining and unlawful surface bargaining. Finding illegal "surface bargaining" is more difficult than finding a needle in a haystack. Why? Because our labor law is predicated on the concept of "free collective bargaining"; free from Government regulation and control. As the Supreme Court succinctly put it in *Terminal Railroad Association of St. Louis* v. *Trainmen*, 318 U.S. 1, 6:

The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. *So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for.* The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. (Italic supplied.)

During the Wagner Act debate, the chairman of the Senate Committee explained the concept of good faith bargaining in this oft cited language:

When the employees have chosen their organization, when they have selected their representatives, all the bill proposes to do is to escort them to the door of their employer and say, "Here they are, the legal representatives of your employees." What happens behind those doors is not inquired into, and the bill does not seek to inquire into it. *NLRB* v. *Insurance Agents' International Union*, 361 U.S. 477 (1960).

When the early Labor Board in the Wagner Act days began to examine the content of the bargaining proposals and counter-proposals, to determine whether or not the employer was merely "going through the motions" and engaging in "surface bargaining" only, the Taft-Hartley Congress responded with a new section 8(d) which emphatically declares that the obligation to bargain in good faith: "does not compel either party to agree to a proposal or require the making of concession."

In refusal-to-bargain cases, the Labor Board is not to be blinded by empty talk. Good faith bargaining in theory requires more than a willingness to enter upon sterile discussion. Both parties must make an honest effort to come to terms and "merely going through the motions" will not suffice. *NLRB* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (Frankfurter, dissenting).

But in practice, good faith bargaining is "not necessarily incompatible with stubbornness or even with what to an outsider may seem unreasonableness." *NLRB* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (Frankfurter, dissenting).

Chief Justice Fred Vinson summed it up in *NLRB* v. *National Insurance Co.*, 343 U.S. 395 (1952) with his conclusion that:

[T]he Act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of his position. And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise *sit in judgment* upon the substantive terms of collective bargaining agreements. (Italic supplied.)

The Court held that an employer did not violate its duty of good faith bargaining when it put a sweeping managements rights proposal on the table and refused to budge. The proposal gave management the unreviewable right to select and hire, promote, discharge, demote, discipline, and determine schedules of work.

Should a labor union strike it lucky and win refusal-to-bargain case, it will not have won very much. One need not look beyond the Labor Board's opinions to verify this statement. Here is what the Board said when it rejected a proposal to make the employees whole—a make-whole remedy—by ordering the employer to pay those wages he would have agreed to pay had he bargained in good faith:

We have given most serious consideration to the Trial Examiner's recommended financial reparations Order, and are in complete agreement with his findings that current remedies of the Board designed to cure violations of Section 8(a)(5) are inadequate. A

mere affirmative order that an employer bargain upon request does not eradicate the effects of an unlawful delay of two or more years in the fulfillment of a statutory bargaining obligation. It does not put the employees in the position of bargaining strength they would have enjoyed if their employer had immediately recognized and bargained with their chosen representative. It does not dissolve the inevitable employee frustration or protect the Union from the loss of employee support attributable to such delay. *Ex-Cell-O Corporation*, 185 NLRB 107 (1970).

The short of the matter is that section 8(a)(5) gives no protection when employers such as Continental Air, Phelps Dodge, Greyhound, International Paper, and countless others set out to force a strike with totally unacceptable bargaining demands, and then break the strike—and the union—with permanent replacements. Employers know this. The minority knows this. It is a specious argument. It has no legitimate place in this debate.

THE MASTRO PLASTICS DOCTRINE AFFORDS NO RELIEF WHEN EMPLOYERS VIOLATE THE FEDERAL LABOR ACT BY PRECIPITATING A STRIKE WITH UNACCEPTABLE BARGAINING DEMANDS AND THEN HIRE THEIR WAY OUT OF A BARGAINING RELATIONSHIP WITH PERMANENT REPLACEMENTS

Mastro Plastics Corp. v. *NLRB*, 350 U.S. 270 (1956) holds that employees who strike to protest unfair labor practices on the part of their employer can get their jobs back on demand. This is in contrast to employees who strike over economic matters, such as wages, hours, health benefits, and the like.

Employers seize upon Mastro Plastics as a cure for the problem before us. They contend that it is an unfair labor practice for an employer to put extreme, harsh, and unacceptable bargaining demands on the table for the purpose of forcing a strike and then replace the strikers with more docile permanent replacements. Under Mastro Plastics, the workers can strike in protest, and replace their replacements at strike's end. So, "not to worry," they say.

We have demonstrated that it is virtually impossible to prove that an employer bargains in bad faith. Neither the Labor Board nor the courts "sit in judgment" upon the substantive terms of collective bargaining proposals, *NLRB* v. *National Insurance Co.*, 343 U.S. 395 (1952). Proposals "may be as bad as the employees will tolerate or be made as good as they can bargain for." *Terminal Railroad Association of St. Louis* v. *Trainmen*, 318 U.S. 1.

But, in any event relief under the Labor Act comes far too late to offer justice. Year in and year out, it takes nearly 3 years to process an unfair labor practice case.

The process begins when an employee files a charge with the regional office of the National Labor Relations Board. The Board employees investigate, and if the charge has merit, they issue a complaint. This takes approximately 48 days.

When the complaint is served, the matter is tried before an administrative law judge, sent to the scene of the alleged violation. There is an average time span of 155 days between the filing of the complaint and the end of the hearing.

The administrative law judge waits for the record to be transcribed, and then writes an opinion. This accounts for 158 days.

An aggrieved party can file exceptions to the administrative law judge report and appeal the case to the Labor Board. On the average, there is a time span of 484 days between the decisions of the administrative law judge and the Labor Board.

This does not end the matter. An aggrieved party can seek judicial review, and some 500 NLRB decisions are appealed each year. The time between decision by the Labor Board and decision by the appellate court averages 485 days.

The Mastro Plastics road to justice may be adequate for those with money and time to spare, but for discharged, displaced workers with no income and families to feed, the delay of justice for nearly 1,000 days is truly justice denied.

This Mastro Plastics argument lacks legitimacy in this debate, and its proponents know this full well.

WHY NOW, AFTER A HALF CENTURY

Mackay Radio was decided in 1938. The Court held that it was unlawful to discriminate against strikers because of their leadership in a lawful strike, but went on the say in an off-hand way that the company was not bound "to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment in order to create places for them."

This unfortunate dicta lay like a loaded pistol available for use but, in the main, kept in the holster. True enough, employers used it in election campaigns to threaten workers with replacement and unemployment should they dare to vote for a union and begin bargaining.

Employers in right-to-work States or other union-free environments used it against low-skill employees in small and marginal bargaining units in times of high unemployment. But these victims lacked political clout and lacked ability to thrust the strike replacement issue to the forefront of national debate and congressional attention.

The issue did not really surface until the 1980's, when President Reagan discharged some 12,000 or more air traffic controllers when they went on an illegal strike.

The 1930's, when Mackay Radio was decided, was the time of CIO mass organizing campaigns and sit-down strikes. Organized labor's great struggle was to get organized and obtain first contracts. The strikes of that period were to force employers to recognize the union, and to protest employer "unfair labor practices." The Macay Radio doctrine did not apply to strikes of this sort.

Then came World War II, with labor's voluntary pledge not to strike. And the War Labor Board saw that pledge was enforced. When it was not, when John L. Lewis led the mine workers on a strike, the courts ordered them back to work.

After the war, Congress responded to a wave of strikes with the Taft-Hartley amendments. Attention centered on issues such as the closed shop, secondary boycotts, jurisdictional disputes, featherbedding, and the like.

Strike replacement remained largely dormant as a public policy question for the ensuing 20 or 30 years. The tone of industrial relations was set by big business/big labor collective bargaining relationships in the major industries. Equal pay for equal work, a pension plan, health insurance, a guaranteed annual wage—these were the issues in the workplace.

Mackay Radio was not an issue. Most employees accepted the practice and procedures of collective bargaining, however, reluctantly. And they knew that the long-term industrial relations consequences of employing permanent replacements are bitterness, strife, and lasting impediments to productivity. Although the power to replace strikers was there, it was rarely utilized by the trend-setting employers.

The short of the matter is that before 1980 it was extremely rare for employers to hire permanent replacements during an economic strike. A study by labor experts at the University of Pennsylvania Wharton School in 1982 described the use of permanent replacements as a weapon which "has only seldom been used. It has not become a basis part of the American system of collective barganing." Perry, Kramer, and Schneider, "Operating During Strikes: Company Experience, NLRB Policies, and Governmental Regulations," Labor Relations and Public Policies Series No. 23, University of Pennslvania (1982), page 123.

All this changed in the 1980's, after President Reagan broke the PATCO strike by firing and replacing more than 12,000 air traffic controllers. Company after company followed suit. Intended or not, the Presidential message they heard was that collective bargaining is no longer the public policy of the United States. It was now respectable to destroy unions. The pistol, loaded in 1938 by Mackay Radio, was now unholstered, and it has been fired again and again.

The Nixon-Reagan Supreme Court gave it even heavier ammunition with its Trans World Airlines decision.

Continental Air Lines, Phelps Dodge Copper Co., International Paper Co.,

Greyhound Bus Lines are merely the tip of the iceberg. There is a groundswell of similar action throughout the business community. Study after study tells us this is so.

1. GENERAL ACCOUNTING OFFICE

During 1990, the General Accounting Office studied trends in the use of permanent replacements during the 1970's and during the 1980's. Two of every three employer representatives, and seven of every eight union representatives who had an opinion, told the GAO that permanent replacements were used more often in the late 1980's than in the late 1970's. Employers told their employees they would hire permanent replacements in one-third of the strikes—31 percent in 1985; 35 percent in 1989. Employers actually hired permanent replacements in 17 percent of the strikes in both 1985 and 1989, replacing about 4 percent of all striking workers.

2. GRAMM STUDY

Professor Cynthia Gramm of the University of Alabama-Huntsville studied 35 strikes across the country—United States—and 21 strikes in New York. Employers hired permanent replacements in 16 percent of the U.S. sample and 24 percent of the New York strike sample. Those who hired permanent replacements responded that this was their first attempt to hire replacement workers.

3. AFL–CIO EMPLOYEE BENEFITS DEPARTMENT

The AFL conducted a study of 1990 strikes which involved 1,000 or more employees. Health care benefits was a major issue in 55 percent of the strikes. Some 11 percent—26,450—of the strikers were permanently replaced.

4. UNITED AUTO WORKERS STUDY

In 1991, the UAW conducted a study of 42 recent strikes. In 28, permanent replacements were hired. In 26 strikes representatives reported replacements were hired within 2 weeks, and in two situations replacements were hired before the strike began. In 12 cases, employers advertised for replacements before the strike began. Thirteen cases resulted in the union's decertification.

The pistol loaded by Mackay Radio in 1938 is being fired. Once again, Congress must act to "encourage the practice and procedure of collective bargaining." This was the promise of the Wagner Act in 1935. It is our obligation to make good on it today.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Chairman, I yield 5 minutes to the distinguished gentlewoman from New Jersey [Mrs. ROUKEMA] who is the ranking member on the Subcommittee on Labor-Management Relations.

Mrs. ROUKEMA. Mr. Chairman, I rise in opposition to H.R. 5—a bill whose proponents claim will close a loophole in the law.

Be not misled.

This bill goes beyond loopholes to a fundamental rewrite of existing law and turns 50 years of labor law and legal precedent on its head and inside out.

H.R. 5 completely eliminates the historic balance, purposely set in motion, to protect both management and labor during the collective bargaining process. That balance was achieved by giving workers the right to strike and management the recourse of hiring permanent replacements.

This bill returns us to the days of widespread labor unrest and hastens the close-down of many businesses.

In fact, it will eliminate the historic balance and do nothing to address the question of how to deal with unfair labor practices.

Current law amply protects the right to strike, and the right to continue business operations during an economic strike. Both sides have something to lose if they fail to reach a collective bargaining agreement:

Labor is threatened with the prospect of permanent replacement if it goes on strike.

Business is faced with the decline in productivity and profits which invariably accompany a strike whether or not permanent replacements are employed.

These risks are designed to encourage settlement of labor disputes. For 53 years this balance of risk has served labor and management very well, and has never been seriously questioned by the Congress, or by the Supreme Court, which first articulated the permanent replacement doctrine in the Mackay Radio decision in 1938, and which has reaffirmed Mackay countless times since then.

If H.R. 5 were to become law, the consequences to the economic health of this country would be enormous, as strike activity increased and as employers were forced to accede to sustainable economic demands by labor or risk going out of business altogether. Nonunion workers in related businesses could find themselves out of work as a domino effect of stalled industries and services respond to prolonged shutdowns by laying off employees.

Moreover, the proponents of H.R. 5 have not made the case that this bill is in any way necessary. They cite increased use of permanent replacement workers by businesses engaged in union busting, but the facts don't bear out this contention. The GAO studied the matter and concluded that permanent replacement workers were used in only 17 percent of recent strikes, and that only 4 percent of all workers were not reinstated after a strike ended as a result of being permanently replaced.

That economic strikes have become more bitter cannot be credibly disputed. But the economic pressures on both employees and business have increased dramatically in the past 10 to 15 years. Exacerbating current labor-management difficulties are growing disagreements about who will bear the increased costs of health insurance, employees or employers? In point of fact, health benefits were a major issue in work stoppages involving 18 percent of workers who went on strike in 1986 and that figure jumped to 78 percent of all striking workers by 1989.

The cost of health insurance is a major irritant in labor-management relations that cannot be ignored. However, this problem cannot be laid at the door of business, management's health insurance costs have risen dramatically and management has had no choice but to seek concessions from labor to assist in bearing those costs. And many employers have joined in the call for universal health insurance coverage because they cannot cope with this crisis and know they cannot shift the burden to their employees. Health benefit costs are going to continue to be contentious and seemingly irreconcilable as to who will bear the burden, and we will see bitter labor disputes centered on health costs with or without permanent replacement workers.

Moreover, many of the high-profile economic strikes of recent years can be attributed to wild merger and acquisition activity that has seen new management call for concessions from labor in order to meet the debt of a heavily leveraged buyout. While I realize that is small consolation for a worker who faces wage or benefit cuts, we simply cannot run to pass H.R. 5 without taking into account the factors that have contributed to labor-management tensions. These factors are broadly economic in nature, and not attributable to hiring replacement workers.

A good example of these tensions is the strike involving the New York Daily News. As you know, the unions called a strike and refused to negotiate further with management, which sought personnel cuts and wage concessions. There were very persuasive contentions that the union had indulged in widespread featherbedding which had become economically disasterous for the paper, and contributed mightily to management's requests for cutbacks. After a prolonged and intensely bitter strike in which permanent replacements were employed, the paper finally said it would find a buyer or go out of business. At the eleventh hour a buyer was found. The new owner offered the unions a deal that included personnel and wage cutbacks similar to those offered by the Daily News management and rejected by the unions in the first place. There is a lesson to be learned here, and that lesson is that unions have no monopoly on wisdom, fairness or common sense and that they can lead employees down the garden path to no avail. If H.R. 5 were the law, the

Daily News would have had to shut down without permanent replacement workers resulting in a loss of the jobs of union members and others forever.

Another important issue in this debate are the well-documented delays in adjudicating employee rights at the National Labor Relations Board. Any employee who is found by the Board to have been striking in response to or in the course of unfair labor practices by an employer is entitled by law to immediate reinstatement and back pay. However, it routinely takes up to 2 years for the Board to finally adjudicate an unfair labor practice complaint. Appeals courts are regularly throwing out Board orders because of the inexplicable and inordinate delay in issuing orders up to 7 years after the case was referred to the Board.

These delays have jeopardized the integrity of the National Labor Relations Act and resulted in justified frustration by both employees and employers who languish in uncertainty. Justice delayed is justice denied. While I will wait until debate on the substitute offered by my colleague and ranking minority member Congressman GOODLING to address this problem more freely, I am here to tell you that without reform of the National Labor Relations Board, we will never even begin to get our house in order in the labor-management relations arena.

And as to the contention of the supporters of H.R. 5, that all other industrialized workers decline to permanently replace striking workers except the United States and South Africa, I would like to point out that in Japan, they have company unions, and therefore it is in no way comparable to United States labor law. Germany prohibits strikes which would grievously wound an employer, and in the Netherlands, courts can enjoin strikes and prevent them from taking place altogether. There is hardly a case to be made for the U.S. emulating other nations' labor laws.

The essential point here is that the law is designed to manage collective bargaining disputes. It is not designed to have unfair advantage to either side, and current law does not have such an advantage. What the proponents of H.R. 5 ignore in pressing for this bill is the fact that the law acts as a referee to both sides, with voluntary agreement as its goal. If business could not permanently replace economic strikers, the law would turn instead to allowing labor to hold all the cards in a dispute, leaving business completely vulnerable.

Let's look at some of the limits on the right of business to continue operations with permanent replacement workers:

The ability of employers to continue operations using permanent replacement workers was most recently reaffirmed in 1990 in NLRB versus Curtin Matheson Scientific where the court ruled that employer may not presume that replacement do not support the striking union. An employer commits an unfair labor practice by refusing to bargain with the union without benefit of a representation election in which permanent replacements and striking workers are allowed to vote. In fact, permanent replacements remain members of the bargaining unit which went on strike, and statutory employees under the NLRA for a period of 1 year.

The permanent replacement doctrine is not some moldy dicta articulated by the Supreme Court 53 years ago and only recently gotten out of mothballs by business. It has been reaffirmed countless times by the courts, and refinements of the right to permanently replace economic strikers have been consistently made. For example, struck employers may not offer inducements, such as super-seniority, to strike replacements, and to do so constitutes an unfair labor practice. Nor may an employer pay replacement workers more than what was last offered to the union before the strike began. The courts have ruled that economic strikers who unconditionally apply to return to work remain employees and are entitled to full reinstatement upon the departure of the permanent replacement unless they have acquired regular and substantially equivalent employment, or the employer proves that the failure to offer reinstatement was for legitimate and substantial business reasons. And reinstated strikers are entitled to all benefits, including past seniority.

And H.R. 5 creates unprecedented privileges for union workers, who may not be permanently replaced, and nonunion workers, who may undertake an economic strike, but who, under H.R. 5, may be permanently replaced. I must remind my colleagues that the National Labor Relations Act protects the right to join a union and engage in concerted activity and the right to refrain from doing so. This is a cornerstone of our labor laws, and we would be throwing out over 60 years of hard won battles to provide balance to labor-management relations by protecting union workers to the detriment of nonunion workers. Again, I must stress that we must protect the right to strike, but under H.R. 5 we will effectively punish those who decline to join a union or to honor a picket line.

Finally Mr. Chairman, I wish to make the unequivocal statement that I would never be a party to union-busting or other tactics which diminish the lawful exercise of the right to strike. But what I am talking about here is maintaining the foundation of our system of collective bargaining, which is that both parties to a labor dispute must have the means necessary, both the right to strike, and the right to permanently replace, which make the prospect of a prolonged dispute costly and to be avoided by both sides. Neutral statistics from the GAO and the Bureau of National Affairs show that replacement workers are not being used with increasing frequency. The fact is that most collective bargaining disputes are settled voluntarily without resort to strikes or permanent replacement, and that most employers only hire such replacements as a last resort under severe economic duress.

Again, I urge my colleagues to vote against H.R. 5.

□ 1210

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. Mr. Chairman, I thank the gentleman from Missouri for the opportunity to address what is perhaps the most important labor legislation that this Congress will have considered in over 50 years. Over 50 years ago we enacted the National Labor Relations Act to establish equitable justice and peace between labor and management in our country. It has worked well for many, many years.

Yes, we have work stoppages, we have differences of opinion, and we have strikes, but they are generally peacefully settled through negotiation. In our country we say "Yes, you may work at your own business, you may create your own business, you may create your own profession, you may work at it, but once you have to reach out and ask your neighbor or your friend or someone else to work with you to help you produce those profits and that income, you must then consider the needs and desires of those people you are asking to help in your business to make your profit."

So the NLRA 55 years ago said that those people then have a right to negotiate what their working conditions and their salaries might be, and that if the negotiations are not immediately successful, labor can only then withhold their labor and say, "Until we have negotiated a new contract, we withhold that labor."

That is referred to as a strike. That right was given to the American workers, as it was to every democracy in this world. But now we have an administration and a court system that says, "Oh, yes, the act says you have a right to withhold your labor, but your employer has a right to bring someone else in and take your job."

The right is then taken away. That would restore that right only in instances where we have an organized union labor force.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, let me just take a moment to put in perspective my position in this debate. I am a former member of the Committee on Education and Labor, and I am a minority Member of this body. I am also a member of four unions and have been in strikes as a participant and an organizer, and my position on this particular legislation comes from experiences I have had on the picket line as well as in subcommittee.

The reason I am not able to support H.R. 5 and rise in support of the Goodling substitute and in opposition to the Peterson substitute is because in my feeling both positions that are before the House today have been too extreme. To do nothing is not enough, and to do what H.R. 5 proposes is too much. I base this on what labor leaders have said to me in my office. What comes out of those conversations is that unfair strikes and unfair lockouts are basically the same. They are unfair. Unfortunately, there is nothing in the Peterson substitute or in H.R. 5 that addresses unfair labor practices or that addresses expediting the processes of the National Labor Relations Board to do something about that. Only the gentleman from Pennsylvania [Mr. GOODLING] does that. That is why I will be supporting him and not this alternative.

However, it is not my purpose here today to debate the fine points of labor law or management law. I want to talk about the law that always gets caught in the crossfire of many of these labor bills, and that is the law of unintended consequences, because in this body and in this Congress and probably for many years to come, we are probably going to be talking about health care. I cannot think of a piece of legislation that is more detrimental to holding down costs and preventing delivery of health care than H.R. 5. Just recently the Supreme Court ruled in favor of the National Labor Relations Board when it told hospitals in this country that they can have as many as eight bargaining units. Anybody can tell us that the more bargaining units you have, the easier it is to strike. That is why individuals in the health care professions have come forward and said that this is a death knell for rural hospitals, urban hospitals, and particularly for those facilities that are fighting to stay alive.

Listen to this. This is from a nurse:

> Under this legislation, it is realistic to expect the housekeeping and dietary staffs to strike at the same time, or within several weeks of each other. The other nurses and I would be forced to work double shifts—one shift caring for our patients and one shift housekeeping and preparing meals. Working double shifts for an extended period of time will physically exhaust the nursing staff and affect the ability of nurses to make the care decisions essential to the well-being of our patients.

Mr. Chairman, right now it costs about $7,000 to $15,000 to replace a registered nurse. If we add H.R. 5 on top of the Supreme Court decision in the American Hospital Association versus The National Labor Relations Board, the law of unintended consequences will drive down the delivery of health care, will drive up health care costs, and will drive out of business the qualifed personnel that we desperately need to maintain quality in our health care system.

Mr. Chairman, I ask the Members to vote no.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. KILDEE].

Mr. KILDEE. Mr. Chairman, the right to strike without fear that you will be permanently replaced is an essential ingredient of labor-management relations. Workers should never be driven to despair.

Back in the mid-1930's, in my home town of Flint, MI, General Motors was engaged in speedups, in increasing production, and my father became a victim of those speedups. His production had been increased several times, and he would come home exhausted from work. One day he came home and told my mother and my brothers and sisters that his production had been increased again, and that he could not keep it up.

My father was a very mild man. I never heard my father use a swear word in his life. He would take us to mass every Sunday and lead us in the family rosary. He was a very mild man, but he had a sense of justice.

The next morning my father went to work, got his production out for the first hour, and it was excessive at that. The boss came by, counted the production, and then took out the famous pink slip to fire my father.

My father, this very mild man, peeled off his wire-rimmed glasses and laid them on the machine. He said, "Bob, if you sign that, they are going to carry one of us out of here, because I have five children at home to feed, and I am going to fight for my job."

Bob Shoars was a decent fellow. He took a chance and ripped up the card.

The UAW made a difference in my father. But since Ronald Reagan really made it acceptable to bash the unions around, I feel that without this legislation workers will have the same desperation that my father experienced during the 1930's. That desperation led to the famous sit-down strikes in Flint, MI, where the workers occupied the plants so they could not be replaced.

So, Mr. Chairman, let us restore to labor the only tool they have, the right to strike without the fear of losing one's job.

Mr. GOODLING. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Illinois [Mr. FAWELL], a member of the committee.

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding me this time.

In H.R. 5 unions are rebalancing labor and management rights under the NLRA to suit their fancy. These are unions that represent only a fading 12 percent of America's work force in private industry.

Their first effort in this rebalancing of labor and management rights is between the union, with its right to strike, and management, with its right to hire permanent replacement workers. And how is the rebalancing of this delicate balance done? It simply eliminates the right of employers to have that last resort, to hire permanent replacement workers. In fact, H.R. 5 labels an effort by an employer to hire permanent replacement workers as an "unfair labor practice." And so the most meaningful bargaining chip an employer has to balance off against a union's right to strike and close the employer's business is simply declared illegal. The fact that it has been an unquestioned right since passage of the Wagner Act in 1935 apparently means nothing to the union leaders who exposure H.R. 5.

So much for the union's balancing of rights and collective bargaining with employers.

This rebalancing of labor and management right of course is nothing more than a new and powerful tool for unions to attempt to get back their vanishing membership.

The second effort in the rebalancing of rights is between the unions and their right to strike and workers, all workers, union or nonunion, and their right as a worker not to strike. That is guaranteed, too, by the NLRA.

□ 1220

Here, in this bill, the right not to strike is trivialized by a new employment preference, the granting of the right to returning union workers after a strike to bump nonstrikers and crossovers from their jobs. They might be called scabs by some of my colleagues on the other side of the aisle. And how is this done? Again, by creating an unfair labor practice, just making it illegal for an employer to fail to recognize the seniority of the returning striker being sufficient to oust a nonstriker, or crossover employee, from their job.

Current law, by the way, states that employers can't give any employment preferences to nonstrikers or crossovers, such as super seniority, better pay than offered to the strikers, vacation benefits, and the like. And current law states that employers must give employment preferences to returning strikers after the strike is ended, in the form of job reinstatements for job vacancies, both for present and future vacancies. But courts have specifically held that returning strikers have no right to bump nonstrikers or crossovers out of their jobs.

Why? It is best explained in the Supreme Court case of TWA versus the

Independent Federation of Flight Attendants, a 1989 case.

The Court in that case pointed out that the flight attendant positions occupied by nonstrikers and crossovers were not vacant. Such jobs, the Court advised were therefore not available for reinstatement by returning strikers after the strike had ended.

The Court ended this comment by saying that to do so, to bump nonstrikers or crossovers, "would have the effect of penalizing those who decided not to strike in order to benefit those who did."

The Court added, "We see no reason why those employees who chose not to gamble on the success of the strike should suffer the consequences when the gamble proves unsuccessful."

In other words, if the employer is forced to penalize the nonstriker or crossover by taking away his job and giving it to a striker, what good is the exercise of the right not to strike, which is a guaranteed right of all workers in this land? The delicate balance between the right to strike and the right not to strike would, of course, be destroyed.

That, of course, is exactly the intent of the unions in their rebalancing the rights of the workers.

Mr. Speaker, all of the rights I have referred to—the rights of the union to strike; the right of an employer to counter an economic strike by hiring permanent replacement workers, and, last but not least, the right of all workers—individual workers, whether union or nonunion, to exercise his or her right not to strike, all of these are "last resort" decisions which can bring about a great deal of controversy in the communities of America. But they all play their part in this Nation's collective bargaining process. They function now within a tension of delicate balances worked out over 50 years of management-labor negotiations. They are as valid today as ever.

During the course of the debate on H.R. 5, the striker replacement bill, I have heard a good deal of rhetoric about several recent, highly publicized labor disputes. Among the labor disputes mentioned by proponents of H.R. 5 as justifying the need for a radical rewrite of our labor laws are those involving Eastern Airlines, Greyhound, Pittston, International Paper, the New York Daily News, and Ravenswood Aluminum.

First, I reject the concept that we should legislate by exception. These isolated, albeit widely publicized labor disputes hardly justify drastic alteration of a 53-year national labor policy. Second, I reject the strictly one-sided, antimanagement characterization of these labor disputes without further, more balanced analysis. While I do not claim to know all of the details involving these disputes, I believe it is irresponsible to rely on such examples without a more complete description of the facts. For example, several of these disputes, such as Greyhound and the New York Daily News, involved alleged unfair labor practices which, if proven, would put the strikes outside the scope of the proposed legislation. Other disputes, such as Pittston, never involved the use of permanent replacements.

In the Ravenswood dispute in West Virginia, for example, I am informed that the average W–2 for an hourly employee before the strike was $34,000. By comparison, the average annual income in West Virginia was $19,800. Even so, and even in view of falling aluminum prices and the effects of worldwide economic competition, the company's final offer in the collective-bargaining negotiations prior to the strike would have increased hourly employment costs by an additional $10 million over 3 years. The union leadership rejected this offer, without even submitting it to the membership for a vote. Instead, after insisting on last-minute bargaining on economic issues after exhaustive negotiations on other issues, the union demanded increased employment costs of $90 million over 3 years. This left a huge gap between what the union wanted and what the company could afford to give. Mistakenly, the union struck Ravenswood believing that the company would be unable to find replacement workers willing to work for the wages rejected by the striking union. In fact, the opposite is true, despite repeated acts of union violence, including beatings and other physicial assaults, destruction of property, and verbal intimidation, directed at the replacement workers and their families. The union miscalculated. Replacement workers, 80 percent of whom are from the local community, and a number of crossover employees, readily accepted these high-paying jobs with the company.

As in any labor dispute, people sometimes picture the company as a large, wealthy, and impersonal entity and the union as a small, struggling band of individuals. In reality, as demonstrated by labor disputes such as Ravenswood, the opposite is often true. A relatively small employer, struggling for economic survival, is confronted by the superior financial and organizational resources of a large international union and its allies. Today, unions use every resource at their command in labor disputes, including corporate campaigns involving manipulative complaints before Government agencies, such as OSHA, and international organizations, such as the ILO. Economic pressure is exerted through product boycotts and other efforts to pressure customers and financial institutions. Add to this the increasing and deeply disturbing use of union violence in labor disputes, and the deck becomes stacked against any management which attempts to continue operations during a strike.

My purpose is not to get into all of the details of the Ravenswood Aluminum dispute, or any of the other recent labor disputes. The matter currently is pending before the National Labor Relations Board, which is the proper forum for investigations, adjudication, and hopefully, resolution of such disputes. But before we legislate major changes to our labor laws based on this and other individual cases, I want the record to reflect that, as in most labor disputed, there are two sides to every story.

Mr. Speaker, not even Senator Wagner, in the heydays of union power in the thirties or forties, could ever have hoped to have found a Congress which would pass and give to him this one-two knockout punch set forth in H.R. 5. This union effort ought to be defeated.

Mr. CLAY. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I rise in support of H.R. 5 because I believe that the permanent replacement of striking workers is legally indefensible and morally reprehensible. A policy that gives preferential treatment to management for failing to settle labor disputes at the bargaining table contradicts the principle of fairness, equity, and justice. It is a practice that allows employers to effectively repeal the basic right of workers to engage in meaningful collective bargaining. It is a practice, Mr. Chairman, that has adversely impacted the lives of many individuals and devastated the peaceful environs of too many communities.

H.R. 5 provides that employers may not reward replacement workers while punishing striking workers. It recognizes sweat, toil, and skill as investment in job security equal to the investment of inherited money. This bill leaves intact the ability of management to use exempt employees, including supervisors and foremen, to perform the work of strikers. It leaves intact the ability of management to transfer work to other facilities or to subcontract the work to other employers. It leaves intact the right of employers to lockout bargaining unit employees. It leaves intact the ability of employers to hire temporary replacement workers. Far from distorting the status quo between labor and management, this bill leaves intact a full arsenal of weapons by which management can seek to force its will.

And neither, Mr. Chairman, as some mistakenly contend, does H.R. 5 buffer workers from the legitimate risks that a strike entails. Nothing in this legislation requires an employer to pay striking workers nor in any way alters the eligibility of such workers for any other kind of special assistance.

But, Mr. Chairman, the chief opposition to this bill is lodged in the fact that it boldly confronts the reality of a

condition which gives favoritism to those who exploit the labor of honest, decent workers. We must face this reality. Since 1981 more than 300,000 Americans have been permanently replaced when they exercised their legal right to strike. This uncivilized way of resolving labor problems allows employers to effectively repeal the right of workers to engage in collective bargaining. When striking workers are permanently replaced, their unions are also permanently replaced by new workers who are defenseless, helpless, and disorganized. According to our labor law, it is the right of the worker to choose to join a union. If that right is to be meaningful, then the practice of permanently replacing workers can not be tolerated.

Almost 60 years of industrial history in this country has shown the fallacy of the contention that employers resort to permanent replacements out of economic necessity. Our major trading partners, our most aggressive competitors—Canada, France, Germany, Japan—all expressly prohibit the permanent replacement of strikers. All of the newly restored democracies of Eastern Europe prohibit the permanent replacement of strikers. Surely American workers whose taxes are expected to support these former Communist governments during this economic transition period—deserve no less.

The opponents of this legislation contend that employers should be guaranteed the ability to win a strike. They argue that we should protect the right of an employer to veto the right of a worker's choice to be represented by a union. But our obligation should be to ensure a fair and equitable balance between labor and management. Our obligation should be to protect the right of all Americans to exercise a voice in the determination of their wages and working conditions. That's how the democratic principles of self-determination are truly served.

The bill before us today will have a greater impact on the rights of American workers than any legislation this Congress is likely to consider this session. It will stop the practice of permanently replacing strikers and provide incentives to bargain in good faith. This bill encourages employers to settle labor disputes at the bargaining table rather than in the street. Failure to pass this bill and to protect the right to strike makes a mockery of workers' rights to engage in collective bargaining.

It is time to put an end to the counterproductive and unfair practice of firing those who merely wish to improve their wages and working conditions.

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. MILLER].

Mr. MILLER of Ohio. Mr. Chairman, while I fully appreciate the right of a worker to strike in order to address grievances that may exist in his or her work setting, I at the same time am concerned that if we eliminate, for all essential purposes the option that employers now have to keep their businesses operational, that we could very well be promulgating legislation that in the end would not only threaten the continued viability of the concern in question but, along with it, the very jobs that the strikers are fighting to preserve. Therefore, I reluctantly feel compelled to rise in opposition to this legislation.

The sponsors of this legislation are well-intentioned and have laudable goals in trying to reduce the number of strikes resulting in the use of replacement workers. Nobody wants to see permanent replacements used in any strike, but it's my fear that if enacted, this legislation will result in more labor stoppages. The ability for an employer to hire permanent replacements has been permitted for over 50 years. To all of a sudden ban the use of permanent replacements during a work stoppage and give striking workers this added negotiating power, I'm afraid will only serve to encourage the greater use of strikes to address perceived grievances. By withholding their labor and making it virtually impossible for an employer to find interim replacements because of the temporary nature of the position to be filled, this legislation could leave the employer with little other than to close down.

This legislation is being considered at the wrong time and for the wrong reasons. Now is not the time to rock our economic boat. We are already having a difficult time keeping our ship of commerce going in the right direction. With today's global economy and increased foreign competition, we would run the very real risk of undercutting our country's competitive position in world markets.

Labor and management are starting to realize the only way to survive the competitive international marketplace is through cooperation and team work. Even the Carter administration rejected the concept before us as being infeasible, citing objections raised by the Commerce Department that the banning of replacement workers would lead to increased labor disputes and inflationary wage increases. Labor unrest has been on a decline since the early eighties and I see no reason why we should jeopardize that trend by passing this legislation at this time.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Florida [Mr. IRELAND].

Mr. IRELAND. Mr. Chairman, it is easy to pay lip service to the small business community. But lip service is not what our Nation's entrepreneurs want or need to survive.

Lip service will not ensure that new jobs are available to young men and women who are just entering the work force.

Lip service will not keep smaller firms from going under in needless and duplicative paperwork and other regulatory requirements.

And lip service will not generate positive, productive relationships between small business owners and their employees.

However, my colleagues, lip service is all small businesses can expect from the supporters of H.R. 5.

Our Nation's 20 million smaller firms want to know how this bill came to be called the Workplace Fairness Act.

There is certainly nothing fair about stripping small employers of their right to keep their doors open when workers walk off the job for more money, or better benefits, or other economic reasons.

There is nothing fair about giving union employees special status under the law that nonunion employees don't enjoy.

In fact, by legislating this unequal treatment, we in Congress will be handing union leaders the organizing tool of their dreams. "Join the union, and if you go on strike, your job will be guaranteed. Don't join, and you can be permanently replaced." This is the message union organizers will be able to deliver to hundreds of thousands of small, nonunion workers.

The impact will be to destroy the good working relationships and high morale currently enjoyed by the vast majority of small business employers and their employees.

The claim that H.R. 5 protects small businesses by exempting nonunion firms is just plain wrong. It is lip service, plain and simple. In reality, the bill has devastating implications for small employers.

Supporters of H.R. 5 have been running ads on local radio stations featuring union employees who have been permanently replaced. "My company wanted to cut my health-care benefits," a female employee declares in one of these ads. "I had to take a stand. But when I went on strike to protect the benefits my family needs, I was permanently replaced."

The point of the ad, I suppose, is that H.R. 5 will protect workers and their families from unreasonable, uncaring business tycoons who want to convert dollars spent on employee health-care benefits into cheap corporate profits. But you and I know that, while this may make great advertising copy, it doesn't realistically portray the problems employers and employees are having in finding affordable health care coverage.

This ad is just one aspect of an emotionally charged and misleading campaign to garner support for a bill that big labor bosses are dying to see become law.

It's no secret that the cost of health insurance is skyrocketing. And smaller firms are by far the hardest hit in the health-care crunch. Many employers have seen their health care costs double or triple in recent years. Still other small companies have been rejected outright for renewal of their policies.

These small employers want very much to provide coverage for their employees. In fact, they rely on that very

same coverage to protect themselves and their families. Faced with huge premium increases in recent years, many small employers have no choice but to ask employees to share some portion of the increased cost of coverage.

If H.R. 5 becomes, law, employees of a small union firm that asks its employees to pay even some small portion of those health insurance premiums would not be able to permanently replace workers who chose to strike rather than assume any share of the increased cost of the insurance. In this situation, an employer would have no choice but to give in to employee demands, no matter how unreasonable they might be.

A small business cannot keep its doors open without workers. There is no cadre of midlevel managers who can step in to replace the striking workers until the dispute can be settled. Temporary workers are expensive and difficult to find. They require training, are less efficient, and are injured more frequently than permanent employees. It would only be a matter of days before a small firm would have to close its doors—perhaps forever. I ask you: What is fair about that?

My colleagues, do not be misled by claims that H.R. 5 won't affect small business.

Do not be duped into handing union bosses the organizing tool of their dreams under the guise of small-business protection.

And do not settle for lip service when it comes to the fate of our Nation's smaller firms. Vote against H.R. 5.

Remember, it is easy to say that you're for small business. But it is how you vote that really counts.

Mr. CLAY. Mr. Chairman, I yield 1 minute to the gentleman from New Jersey [Mr. ANDREWS].

Mr. ANDREWS of New Jersey. Mr. Chairman, some of those who oppose H.R. 5 say that it will impede economic growth. They could not be more wrong. Economic growth occurs when it is inclusive, when everyone can share in it.

Without this change in the law, there is no effective right to strike. Without an effective right to strike, there is no effective right to organize. Without the effective right to organize, there will be no inclusion, no incentive, for all of us to become involved in reigniting the engines of economic growth.

For those who say that the country will not grow with H.R. 5, I say we will not grow without it.

Mr. Chairman, I urge Members to cast a vote today not only for fairness; cast a vote for inclusive economic growth. Cast your vote for H.R. 5.

□ 1230

Mr. GOODLING. Mr. Chairman, I reserve the balance of my time.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. OWENS].

Mr. OWENS of New York. Mr. Chairman, the bill that we are about to vote on is a bill about fairness in the workplace, and this is a fairness which the majority of the American people assume is already in existence. This bill is about the right to strike, and most Americans assume that workers already have the right to strike. But common sense tells us that you do not have the right to strike if the labor law says you cannot be fired if you go out on strike on the one hand but on the other hand, the Supreme Court interpretation says you cannot be fired but you can be permanently replaced.

Common sense tells us that to be permanently replaced is the same as being fired. When one is permanently replaced, one does not have a paycheck. When you are fired, you do not have a paycheck. They are both the same. We must all vote for this bill to end what is a gross injustice.

Americans of all walks of life do not want to have our workers treated as the workers are treated in South Africa. The Daily News strike in New York, one of the most vicious attempts by management to work the permanent replacement segment of law to break a union, all of the consumers of the city of New York, all of the people who read the Daily News rose up and said, we do not think this is fair. We will not buy the Daily News.

The Daily News lost advertisers. Management was brought to its knees and had to sell the paper at a loss in order to recoup. They did not bust the union.

All Americans, when they understand that this is about fairness and justice, will come down on the side of the workers. We want our workers to be treated fairly. We do not want permanent replacements. We do not want them to be fired.

Fairness means that workers in America must have a clear right to strike.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentlewoman from Hawaii, [Mrs. MINK].

Mrs. MINK. Mr. Chairman, I appreciate very much the opportunity to address the House on this most important issue.

Mr. Chairman, I rise today to ask this House to vote for the reinstatement of the principle of balance and equity in labor-management relations. In recent years, the practice of permanently replacing strikers, which is nothing less than being fired from your job, has become common practice to punish workers who only seek to exercise their rights under collective bargaining and as such it has worked to poison the atmosphere in the workplace.

This hostile arena comes at a time when it is critical that labor-management relations be a positive influence to achieve the level of productivity and competitiveness in the American economy we need to meet our international goals.

During the 1980's the number of unfair labor practice charges doubled. The number of workers who had to go to court to win reinstatement in their jobs after being fired grew into the thousands in the seventies and eighties. The current climate which seeks retribution against workers who exercise their rights is corrosive and requires the enactment of H.R. 5.

Unions have had to stand the line because their contracts have been hit by reductions in health and pension benefits. Almost four out of five strikes in the eighties were to preserve the health benefits of workers and retirees. Striking and then being fired from their jobs is an egregious way to punish families all across the country. We need H.R. 5 to protect working people from this harassment.

Firing striking workers is a violation of the basic principle established in the National Labor Relations Act which granted workers not only the right to join unions, but when they did so, to allow them to bargain collectively with their employers. No other Western country except South Africa allows strikers to be fired and to damage the ability of management and labor to find common ground for agreement. Our biggest industrial competitors, West Germany and Japan, have these protections for their workers, and they have towered in their economic achievements.

The threat of loss of your job, if you stepped out of line, and misspoke, or seemed contentious, was the case before the enactment of the Wagner Act. It was the sense of this Nation that we needed to protect the worker from such untoward exposure to loss of his job if he spoke out against intolerable working conditions or unfairness. We gave the workers the cover they needed by the passage of the National Labor Relations Act. After this law passed, workers could speak out without fear of loss of their jobs.

Until recently that was the spirit in which labor-management relations were exercised. And the country prospered.

We need to restore this relationship to one which cannot be eroded by the fear of job loss. The right to strike is the very foundation of the workers' right.

I urge this House to overwhelmingly reaffirm this right today.

Mr. FORD of Michigan. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The time is now under the control of the gentleman from Minnesota [Mr. OBERSTAR] and the gentleman from Arkansas [Mr. HAMMERSCHMIDT]. Each is recognized for 15 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. OBERSTAR].

Mr. OBERSTAR. Mr. Chairman, I yield myself 6 minutes.

For over 200 years of the industrial revolution, prior to enactment of the Wagner Act, workers were at risk. They could be hired and summarily fired without rights, without standing, and often were.

The Wagner Act, which was labor's bill of rights, established the right of a worker to organize and to bargain collectively with his or her employer and to withhold his or her services from that employer in time of dispute.

In the 1938 famous Mackay decision, there was a little bit of a crack opened in that right to strike and to come back to your job after one had settled the dispute with the employer. The court held that workers could be permanently replaced and not called back to work, even if the strike were settled.

For four decades afterward, that little bit of an opening for employers tilted the balance back 200 years and was not used until the 1980's. Then came a decade of despair for the labor movement, a decade in which there was an avalanche, literally, of actions by employers to replace their workers for simply withholding their services in time of labor disputes, going on strike, faced with the prospect of never being able to come back to work.

The Subcommittee on Aviation and the full Committee on Public Works and Transportation has jurisdiction over a little part of this issue under the Railway Labor Act in its coverage of airline employees. The subcommittee held a full day and many hours of hearings on this issue.

What emerged from that hearing was a clear pattern of action of increasing intensity, action against striking workers in the airline industry.

We had Lorenzo I at Continental in 1985, when permanent replacements were hired for striking pilots. Over 2,000 of them never saw their jobs again. Over 5,000 machinists and 1,200 flight attendants were permanently replaced.

Alaska Airlines in 1985, permanent replacements hired for machinists. United Airlines in 1985, 570 permanent replacement pilots hired.

□ 1240

Although, they refused to cross picket lines.

TWA in 1986, 2,350 flight attendants permanently replaced, and then we had Lorenzo II in 1989, Eastern Air Lines; 1,800 flight attendants, 4,500 machinists, 1,100 pilots, 7,400 in all; from one of the most prolonged, protracted, and bitter, painful labor disputes in the airline industry.

Clearly, the balance had been tilted against workers with this persistent action of employers to deny workers the right, in effect, to withhold their services in time of dispute when that was the ultimate weapon and all else failed.

This is not to say that workers undertake a strike lightly or easily. I grew up in a steelworker family in the iron-mining country of northern Minnesota. I lived through strikes as a young kid growing up not knowing whether we were going to have a meal the next day, because we did not have striker funds. We did not have food stamps. If you did not save a little bit, you had soup, and when the soup ran out, the soupbone went dry, well, that was it. You did without. Nobody undertook a strike lightly, but when it was the only way to bring management to the table and to negotiate over basic rights for health benefits, for vacation, for decent hours of work, for protections on the job, for safety that we had to negotiate in those days, and we now have an Occupational Safety and Health Act, and a Mine Safety and Health Act to protect the workers, and when you could not negotiate those, the only way was to go out on strike.

Workers lost money. Families did without things. A strike was not something to be lightly undertaken. It was undertaken with pain on both sides.

This legislation simply restores the balance and the equity intended by the Wagner Act to give workers the right to negotiate and to strike, to sit as equals at the bargaining table, and not have a bargaining table that is tilted on one end toward management and so high on the other that they cannot see the working person.

I urge support of this legislation.

Mr. HAMMERSCHMIDT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today, we are considering one of the most important labor bills to come before this body. In other cases, such as bills involving labor protection provisions [LLP's] and flight attendant duty time, I, and many other Members on this side of the aisle, have been supportive of labor's position. Our commitment to the working people of America is clear.

However, this bill presents a different situation. While our commitment remains the same, our approach is to maintain the status quo, because enactment of this legislation will ultimately be harmful to the working man and woman of this country.

We do not believe that the way to improve the situation is to upset the current balance between management and labor. In our view, the system that has been in place since the Supreme Court's Mackay decision of 1938 is a good one. It has benefitted all sides.

Since 1938, the American economy has grown dramatically. This has been good for all, both employers and employees. In short, our standard of living has greatly improved since 1938. Indeed, our economy is the envy of the world.

If the Mackay decision had been as bad as proponents of this legislation say, we would not have seen such widespread benefits from our economic prosperity. And it is simply not true that the use of the Mackay doctrine is something new. In fact, testimony at our Aviation Subcommittee's hearing demonstrated that the doctrine was used before 1980 much more often.

So while it is clear that the Mackay decision has not been detrimental to the American worker, upsetting that doctrine would be.

Changing the law now would overturn the delicate balance under which labor can strike and management can continue operating during the strike, It would mean that employees would have much less incentive to bargain in good faith. They could go out on strike knowing full well that they could get their jobs back at any time, regardless of the length of the strike or what they did during the strike. Management would be unable to attract a meaningful labor force to keep its business going during the strike.

The result of all this will be more strikes, more bankruptcies, more inflation, less labor peace, and a reduction in our international competitiveness. Naturally, this will adversely affect all Americans, including working Americans.

Therefore, Mr. Chairman, I oppose this bill. I oppose it not only on the merits, but also because of the way it is written. For example, I am concerned that the bill in its current form is unfair to nonunion workers.

Another problem with the bill is that it provides protections to strikers even if they engage in violence, secondary boycotts, or other unfair practices. If management were to engage in similar unfair labor practices, it would lose, even under current law, the right to replace strikers.

In closing, let me reemphasize a point I made during our committee's consideration of this bill. That is, replacing strikers is not the same as firing them. The difference is that fired employees have no right to get their jobs back, while replaced strikers have a preferential right to their jobs, as well as the right to continue to accrue seniority. Indeed, in cases where the business survived the strike, most permanently replaced strikers did get their jobs back.

Accordingly, Mr. Chairman, for all these reasons, I urge a no vote on H.R. 5.

Mr. Chairman, I reserve the balance of my time.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from the District of Columbia [Ms. NORTON]

Ms. NORTON. Mr. Chairman, as a labor-law professor down the street at Georgetown, I used permanent replacements for more than the narrow rule of law involved. Almost every important principle of labor law and labor rela-

tions is implicated, and some of the most cherished rules of democracy as well.

I would ask Socratically: Is there a right to strike if you can be permanently replaced? Only South Africa says yes. Our allies say permanent replacements are not consistent with the right to strike, and I do not believe that my country wishes to stand with the Republic of South Africa.

There is a symmetry in our labor law. There is the right of workers to withhold their labor and the right of management to keep its business going. That symmetry is not there simply for form. It is there in no small part because the overarching purpose of the National Labor Relations Act is to ensure labor peace, and we have a better chance at labor peace, which keeps our industry going, if each respects the rights of the other and understands the obligations of the other, the employer to keep his business going, workers to withhold their labor, and at some point they then come together, and we achieve the kind of peace that has characterized labor-management cooperation and relations in this country.

Permanent replacements have given us longer strikes and the spread of conflict beyond the parties. Temporary replacements, which we have lived with for more than 50 years, have given us the kind of labor-management relations we are proud of.

Democracy itself is implicated in this bill, for free trade unions and the right to strike are as essential to democracy as freedom of religion, as due process for the accused, and as the first amendment.

Let us stand with American principles today and vote for this bill.

Mr. HAMMERSCHMIDT. Mr. Chairman, I ask unanimous consent that the gentleman from Pennsylvania [Mr. CLINGER], the ranking member of the Aviation Subcommittee, control the balance of the time for the Committee on Public Works and Transportation on our side.

The CHAIRMAN pro tempore (Mr. PRICE). Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. CLINGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to try to dispel a couple of, glaring misrepresentations that have been put forward thus far in this debate.

The first is that the PATCO strike in the early 1980's, and the Reagan administration's handling of that strike, are somehow the mother of all evils that this bill is designed to correct. The second misrepresentation that the proponents of the legislation assert that employers have only recently used the Mackay doctrine at an unprecedented rate to replace workers, and this has happened as a result of, and subsequent to, the PATCO strike.

□ 1250

I think both of these statements are misrepresentations. Let me address the first one; that the handling of the PATCO situation was what led to the situation we have today and the need for this legislation. The first thing that really has to be emphasized again and again, the PATCO strike had nothing, nothing whatsoever to do with striker replacement in the private sector, either under the National Labor Relations Act or under the Railway Labor Act, which the Committee on Public Works and Transportation is most concerned with. The PATCO strike involved the public sector, and under the Federal Service Regulation Act, an act that Government unions have supported, striking against the U.S. Government is illegal and requires the firing of Federal employees who engage in a strike.

What we had here was that these were strikers acting in an illegal fashion. They were fired for violating a Federal law. They were not replaced. They were fired. New employees were hired to replace the fired employees.

And it should be pointed out, finally, that in this instance, President Reagan gave the employees who were on strike every opportunity to return to work before he fired them. I hope we can lay to rest the idea that somehow the PATCO strike and the Reagan administration handling was responsible for leading to this legislation.

Second, it is alleged that there has been an unprecedented rise in resort to the Mackay doctrine of the replacement since the PATCO strike. Recent studies have shown that permanent replacement of strikers is not indeed a recent phenomenon. In over 90 percent of the cases, and there have been 250 involving Mackay replacements, all but 22 of those replacements occurred before the 1980's, before the PATCO strike.

According to the General Accounting Office, Mackay replacements were hired in only 17 percent of all strikes, and more significantly, this only affected about 3 or 4 percent of all strikers in the 1980's.

Mr. Chairman, in conclusion, let me say that the airline industry has been heavily beset in recent months, and indeed in recent years. They have been faced with tremendous increase in fuel costs, threats of terrorism, the Desert Storm situation, the recession. All of these have led to enormous losses in the airline industry, over $4 billion just in the last quarter of last year. We had a number of bankruptcies including Pan Am, Continental, American West, Midway, and others are threatened. Passage of H.R. 5 would accelerate the trend toward concentration in the airline industry, a very fragile industry at this point, and this would lead to less competition and undermine, in my view, the flight options and the fare benefits resulting from air deregulation.

I would strongly urge a no vote on this legislation.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act. A bill to restore basic rights to American workers. A means to restore some balance to our labor management relations.

This Nation is proud of its tradition of inspiring men and women to strive for better lives for their families through hard, honest work. We are a nation that honors hard work and the entrepreneurial spirit that have created America's vast wealth.

When I consider this legislation, I cannot ignore my heritage: an Italian working class neighborhood where my mother worked in the sweat shops and munitions plants. We have come a long way to securing basic rights for working people and creating a fair balance of interests in the workplace since the days when my mother slaved behind a sewing machine. That balance is now threatened.

We have lost something as a country in recent years. Hard earned dollars are buying less. Workers have fewer rights and fewer protections. Civility has broken down. The contract that binds workers and management in common enterprise has started to come undone.

The striker replacement bill is about civility, dignity in the workplace, and basic rights. The bargaining process requires that workers, to enhance their bargaining position, have the right to strike. But that is a hollow right if its exercise means the permanent loss of one's livelihood. The worker loses, his or her family loses, the company loses.

Mr. Chairman, this bill simply affirms what my parents fought for. I urge passage of the Workplace Fairness Act.

Mr. CLINGER. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. BALLENGER], a member of the Committee on Public Works and Transportation.

Mr. BALLENGER. Mr. Chairman, I think it has been truthfully stated on the floor that this bill destroys a worker's right not to strike.

There has been some debate if right to work laws are affected. My home State of North Carolina and 20 other States have passed right to work laws. At the heart of right to work laws is the protection of 88 percent of our workforce from discrimination. The individual is allowed to make the informed decision, based upon merit, whether to join a union.

Unfortunately, the Strike Incentive Act will impose a penalty on nonunion workers. The bill removes protections passed by Congress and the States for hard-working Americans. Under H.R. 5,

workers who choose not to go on strike and continue to work could lose their jobs, any seniority accrued during the strike as well as consideration of any training provided during the strike.

Let me use an example provided by the National Federation of Independent Business [NFIB]:

The employer and the union agree to a contract and the striking workers return to the workplace. The strike forced the business to streamline its operation, making layoffs necessary. H.R. 5 demands that all layoffs will be made among employees who did not join the strike (nonunion workers), unionized workers who did not strike, and employees who returned to the company prior to the end of the labor dispute. Only those workers who toe the union line would be granted their jobs.

In right to work States, following Federal and State law, employees are told the decision to join a union is entirely theirs to make. However, it is silly to then turn to these workers and tell them if they don't join a union, they will lose their jobs anyway. H.R. 5 tells workers that if they agree with a union, their jobs are secure.

Right to work laws should be protected. Members from these States should be fighting to preserve these principles and vote down H.R. 5.

I would also like to mention a study by Dr. James Bennett, a professor of economics at George Mason University. Dr. Bennett published a study entitled: "Private Sector Unions: the Myth of Decline." The study showed that union income not membership was growing rather than shrinking, even when indexed for inflation.

In fact, in 1987, total union receipts came to $11.8 billion. As you may recall unions, represent only 12 percent of the private sector workforce.

H.R. 5, the Strike Incentive Act, will help union bosses get more cash. H.R. 5 will coerce and entice untold numbers of new compulsory dues payers into the union ranks. With this flood of new cash, big labor will be able to increase their attacks on State right to work laws in North Carolina and in other States.

It seems to me that almost $12 billion a year is more than enough money for union bosses to use to push their anti-business, anti-right-to-work agenda. This bill is just another tool to help big labor achieve their goal.

Join me in opposing this bill.

The CHAIRMAN pro tempore (Mr. PRICE). The gentleman from Minnesota [Mr. OBERSTAR] has 6 minutes remaining, and the gentleman from Pennsylvania [Mr. CLINGER] has 4½ minutes remaining.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, sometimes you cannot right a wrong, but we can learn from bitter experience. Sometimes we can make things better for future generations of Americans, our friends, and our neighbors.

Almost 3 years ago today tragedy struck hundreds of families in a small city way up in the Pacific Northwest, 3,000 miles away from this body. In Springfield, OR, my home town, a productive wood products manufacturer was bought out. The new owners, well they just did not like unions. No matter what, the fact that the Nicolai Plant they bought out was the most profitable and productive plant in their whole operation, much more profitable than their nonunion shops in the South; no matter the fact that they had a stable and productive and dedicated work force, with hundreds of years of total experience; no matter that the workers just wanted a fair settlement reflecting their productivity and profitability with the company. The new masters wanted the union out. They set out to break it, and they did.

They broke it because they have the tool for locking people out and then permanently replacing them, taking away their jobs, firing them, against the intent of labor law in this country, despite the distorted Mackay decision of many years ago.

□ 1300

Who won? No one won. The plant never recovered its profitability and productivity and the hundreds of families in the community of Springfield were disrupted. Many older workers never returned to full-time work. Many took lower paid jobs. Many had to return to school and get retrained or go into other employment.

This bill restores a fair and simple balance. Owners have the right to continue to operate during the strike, but not to fire the striking workers. Workers have one tool. They can deprive the owners of their productive labor temporarily in order to get a fair settlement, in order to get their fair share of theAmerican dream. That is what this is about today. It is not about big labor bosses or anything else. For a safe and secure workplace, decent wages, vote aye on the Workplace Fairness Act.

Mr. CLINGER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, the whole case for H.R. 5 is based on the idea that the use of permanent replacements for strikers has exploded during the 1980's.

The proponents admit that hiring replacements has been sanctioned by 50 years of labor law; but they say it was seldom done before the 1980's.

Because this is a new problem, they argue, we need to adjust the law, but their facts are flat wrong.

There is no evidence—absolutely none—that the use of permanent replacements has become widespread in the 1980's. Nor is there any evidence that they were seldom used in earlier decades.

The GAO—in a report solicited by the sponsors of the bill—concluded that:

In the years surveyed (1985 and 1989) only 3 out of 20 strikes involved the use of permanent replacement.

And in those cases only a small number of workers were actually replaced: 4 percent in 1985, declining to 3 percent in 1989.

That is 3 or 4 percent of workers were replaced under the Mackay doctrine—and many of these were no doubt rehired in strike settlements later. That is hardly a widespread phenomenon.

It is also flatly untrue that replacements were never used before the 1980's.

Although data is somewhat scarce, a survey of all cases before the Labor Board in which the Mackay decision was cited shows that there have been over 251 cases in which permanent replacements were hired. All but 22 of these occurred before 1981.

The bottom line is this: The hiring of permanent replacements is not widespread today and it is nothing new.

The Democrat proponents of this bill are using faulty history to justify overturning a key principle that has been in our labor law for 50 years. And they are doing that in the special interest of an organized minority of workers and in prejudice against the vast, responsible, majority of workers.

That, too, is not new and it is not different.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. APPLEGATE].

Mr. APPLEGATE. Mr. Chairman, I rise in support of H.R. 5.

President Bush said recently that it was moral and just that we give China most-favored-nation status so that they can send their slave labor-made products into the United States, made by people who have no workers' rights, who have no benefits at all. He has got it backward.

It is moral and just to recognize workers' rights. It is moral and just to allow that they have the right to be able to negotiate and strike if they need for better wages and benefits.

No working man or woman in the United States or anywhere in the world wants a strike, because it is devastating financially and psychologically, but they have got to have better benefits if they want to feed, clothe, and house their families. Industries and communities do not want to strike, but when workers who are the consumers in a community cannot negotiate a contract, then they only have one alternative to go to and they have to strike, and now industry and Government wants to take that right away from them.

Yes, it has been in effect for over 50 years that they could do that, but it was not until the 1980's when the antilabor, antiworker Reagan administration came in and decided they were going to take those rights away from

them. He believed the American way was to take from the poor and give to the rich.

Well, should we recognize slave labor? Should we take away the American workers' rights? That is not the American way, Mr. Chairman. That is not it at all.

How would you like to work for 20 or 30 years in a plant and then cannot negotiate, go out on a strike and then get fired for doing it, just because you wanted to ask for better benefits. That is not the American way, to get fired for doing that. You want to be able to recognize that time, which is thrown out onto the street, and you allow some replacement worker to continue on. You do not get your job back. That has happened in my district, so I know the heartbreak of that.

So I say this is a fairness bill. I think that the House of Representatives should give it its fullest support.

Mr. CLINGER. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. BARRETT].

Mr. BARRETT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I oppose H.R. 5. You know its unfortunate that we're debating a bill that'll never become law. We all know what's going to happen. Congress will pass H.R. 5, or the Senate's bill; the President will veto; and Congress will sustain his veto.

And after all that time—after the shouting is over—will the American worker, or American taxpayer, be better off? Regrettably, the answer is no.

But there is a positive, substantial step we can take. We can begin working anew on labor law reform. Specifically, we can begin to address the decisionmaking process at the National Labor Relations Board [NLRB]. An agency designed in part to ensure employees aren't unfairly treated by employers.

In the past, a decision by the Board could take anywhere from 1 year to 7 years. In fact, in January 1991, the GAO reported that once a case has been forwarded to the Board's headquarters, in 10 percent of those cases it took between 3 and 7 years before reaching a decision.

Members of the Education and Labor Committee recently received a letter from James Stephens, the Chairman of the Board, taking exception to the statements on the Board's case processing problems, made by Mrs. ROUKEMA, in the committee's report on H.R. 5.

While my hat goes off to Mr. Stephens for the reforms that have taken place; I must contend, we still need to review the NLRB to find improvements to the Board's decisionmaking process.

According to Chairman Stephens, as of June, 369 cases were awaiting a Board decision. While this is a marked improvement over the 1,059 case backlog in 1983, it still is far too many. The Board can do better.

For any delay or backlog in resolving labor disputes compounds exponentially the original dispute between labor and management.

But unfortunately Mr. Chairman, H.R. 5 does not even begin to address that problem. If H.R. 5 were enacted, the delays would still continue; the striking workers would not receive a timely resolution to their complaints; the employer would lose considerable sums of money—if not the business entirely—while waiting for a decision.

H.R. 5 throws the scales completely to the side of labor; ignores the rights of business owners; and ignores the need for NLRB reform.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. OLIN].

Mr. OLIN. Mr. Chairman, I rise in support of H.R. 5.

For 35 years before I came to Congress, I was a business manager, mostly in charge of manufacturing plants. I can tell you that during those times we had quite a number of strikes of a national union.

I can tell you also in those strikes the presumption was that we were going to keep the company running, that the strikers would come back to work and our job was to sit down with them and see if we could not get things settled. We conducted those strikes, we got through the strikes, some of them were as long as 14 weeks, kept part of the plant running. We kept good feelings between the employees and the management during that time.

I can tell you that system worked in industry for 40 years and it worked broadly. It was only in the eighties that some of these employers got the idea that maybe they could rely on getting replacements for strikers in order to get rid of their unions.

I have had four cases right in my own congressional district during the eighties where an employer who did not like unions got rid of the union. He got rid of them that way.

This was not contemplated in the National Labor Relations Law, whatever you say. That decision needs to be overturned. It is unfair, it is un-American, and it is about time we got it fixed.

Mr. CLINGER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, airline strikes have been cited as a reason for the need to enact this legislation because of abuses that are cited in connection with some of the airline strikes.

□ 1310

But I would just make the point that in almost every instance where there has been an airline strike, the overwhelming majority of the employees who were replaced have either gotten their old jobs back or have been offered their old jobs back.

So to say there has been this massive dislocation, displacement of workers just is not true, at least as it relates to the airline strikes that we have had in recent years.

Finally, I would just say this is going to be a terrible blow to the airline industry, which at this moment in time is probably in its most fragile condition that it has been in its entire history.

I would hate to see a further consolidation in the airline industry, which would clearly result from enactment of this law.

So I would urge again a "no" vote on H.R. 5.

Mr. OBERSTAR. Mr. Chairman, I yield the remaining 1 minute of our time to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act.

As a cosponsor of H.R. 5, I believe that this measure is necessary to restore a fair balance between labor and management when a strike has occurred over economic issues. The frequent use of the practice of hiring permanent replacements for striking workers has given management an unfair advantage over legitimate strikers. Hiring permanent replacements also subverts collective bargaining efforts which have been so effective in promoting a balanced, cooperative relationship between labor and management.

As we head into the 21st century, American workers must be able to compete effectively with the workers of our major trade competitors, and to improve the quality of American industry. Today, all of our primary trade competitors, including Japan and Germany, have laws which prohibit the hiring of permanent replacements for strikers. We all suffer the grave consequences of declining wage standards and decreased productivity when we deny workers the right to strike without fear of losing their jobs. To continue to be competitive in a world market, we must make strides to strengthen the backbone of our economy. H.R. 5 is a positive and necessary action which highlights the value we place on our workers, and the confidence we have in them. Fairness to U.S. workers contributes immeasurably to productivity which is so necessary to the Nation's economic success domestically and internationally.

I urge my colleagues to vote for H.R. 5.

Mr. OBERSTAR. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. KOLTER].

Mr. KOLTER. Mr. Chairman, I thank the chairman for yielding this time to me, and I rise in strong support of the

working men and women of America and H.R. 5.

Mr. Chairman, I rise today in strong support of the working men and women of America and of H.R. 5, the workplace fairness bill. For too long, the workers of this country have been subjected to threats, intimidation, and even unemployment for exercising their legal right to strike. It is time to end this dark period in labor-management relations by passing this bill.

In the years following the turn of the century, American workers had virtually no protection from unscrupulous employers capable of firing employees suspected of involvement in union organizing activity. If workers voted to strike, company owners could hire permanent replacement workers to take their jobs, bring in Pinkerton guards to surround the factory, and use violent methods to lock rightful workers out of the plant. These industrial robber barons of the past used the absence of labor protection laws to their advantage, while making great profits for themselves and their top executives.

In the years following the Great Depression, Congress and the administration worked together to enact legislation designed to provide America's workers with the opportunity to bargain collectively and exercise the right to strike. Both the National Labor Relations Act and the Railway Labor Act guarantee this right. Section 13 of the National Labor Relations Act states that nothing "* * *shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications of that right." These laws also guarantee that a worker may not be fired for participating in a legal strike. Now I ask you—what is the difference between firing a worker for going on strike and permanently replacing a worker for going on strike? The net result is the same—the striking worker loses his job.

Court decisions in the cases of National Labor Relations Board versus Mackay Radio and Trans World Airlines versus Independent Federation of Flight Attendants have severely restricted the right to strike in this country. Although the Mackay ruling has been on the books for over 50 years, it was not until the 1980's that the use of permanent replacement workers became widespread. The firing of 11,000 air traffic controllers by President Reagan in 1981 began a policy of open warfare against the working class of this country. When corporations witnessed the intrelerance of Government in the PATCO dispute, an era of distrust and confrontation began in labor/management relations.

Eastern Airlines is a sad case of what can happen to a healthy company when legitimate employees are fired—I'm sorry, permanently replaced—in favor of replacement workers. Frank Lorenzo, through his policy of terrorizing Eastern's employees, was able to almost singlehandedly destroy a company that was once the crown jewel of the domestic airline industry. He permanently replaced his striking employees and refused to negotiate a new contract with the machinists union. So much for a guaranteed right to strike.

Examples abound of companies using scab labor in the 1980's. International Paper, Continential Airlines, and Greyhound Buslines are among some of the better known cases of companies hiring permanent replacement workers during the past decade.

The critics of H.R. 5 claim that the current labor-management balance is working well because the number of strikes has declined. It's no wonder, would you go on strike if you knew there was a good chance that you would be fired for doing so?

Mr. Chairman, it is time to close this much abused loophole in Federal labor regulations. We can accomplish this with the enactment of the Workplace Fairness Act. I urge my colleagues to join with me in giving the working people of this country a break by voting "yes" on H.R. 5.

I commend my friend from Missouri, BILL CLAY, for sponsoring this fine piece of legislation, and I commend Chairmen ROE, FORD, and DINGELL for their hard work and attention to their committee members' concerns with various aspects of this bill.

The CHAIRMAN pro tempore (Mr. PRICE). The gentleman from Washington [Mr. SWIFT] will be recognized for 15 minutes, and the gentleman from Pennsylvania [Mr. RITTER] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Chairman, I am a Member of Congress who very rarely says that we deal with simple issues here. In fact, I think a majority of the time we deal with very complex things, often very highly technical things. The decisions are difficult, and what the right thing to do is sometimes very difficult to divine.

But to my mind this issue is simple: You are for real collective bargaining, or you are not.

I am a free enterpriser. There are many things wrong with it, but, like democracy itself, the free enterprise system seems to be better than all of the other systems that have been devised so far. But it has always seemed to me that the concept of organized labor is simply the way in which the individual worker can be a part of the free enterprise system.

Workers must have their piece of the pie in this system somehow or other, and one, they can beg for it under a paternalistic system or you can devise the means, as we have in this country and in many, many nations around the world, where workers can take care of themselves by banding together to negotiate with their employers.

When you stop and think about it, what you really have between management and labor is a partnership within the free enterprise system. Each needs the other.

This partnership is a very important framework, but there must be a method by which the partners can resolve differences, and that mechanism is called collective bargaining. That requires a balance between the two.

For 40 years that balance worked in practice. Forty years, I might add, of the greatest prosperity in the history of this country and 40 years that no fair-minded person would suggest was marked primarily by labor strife. Only in the last 10 years, the assertion by some in management of a dormant technique to replace strikers, has that balance been disturbed. And it is unacceptable to permit this im-balance to continue.

That is the reason I suggest that this decision is simple: Should labor share in our economic system as an equal partner or not? That is the question. I would suggest that the answer to that question is self-evident.

Mr. Chairman, this is one of the most important pieces of labor-related legislation that will come before us in this Congress. H.R. 5, the Workplace Fairness Act, will rectify a serious imbalance that currently exists in the collective bargaining process. By prohibiting the permanent replacement of striking workers, H.R. 5 will protect the rights of labor union members to engage in legal strikes.

I would like to commend Chairmen FORD and WILLIAMS of the Education and Labor Committee, Chairmen ROE and OBERSTAR of Public Works, and my chairman, Mr. DINGELL of Energy and Commerce, for the leadership they have shown in bringing this important piece of legislation to the floor. Also, I would like to commend Mr. CLAY, the sponsor of this legislation, and the more than 200 Members who are cosponsors, for their support of workers' rights.

H.R. 5 amends both the National Labor Relations Act and the Railway Labor Act to prohibit the permanent replacement of workers involved in legal economic strikes.

Permanent replacement workers are seldom used in railroad labor-management disputes because the extensive mediation process provided for in the Railway Labor Act is designed to settle disputes without either party resorting to work stoppages. Just because the weapon is seldom used, however, does not reduce its potentially devastating impact on the right to strike.

If employees can be dismissed for exercising their legal right to strike, then that right becomes meaningless. We must ensure that our railroad workers, who provide our Nation with vital transportation services, are free to bargain with their employers under fair and balanced conditions and are able to exercise their legal right to strike if necessary.

The Railway Labor Act also applies to the airline industry, and it is here that the issue of permanent replacement workers becomes more significant. Noteworthy examples are the 1985 Continental and 1989 Eastern Airlines strikes, in which Frank Lorenzo permanently replaced pilots, flight attendants, and machinists who exercised their legal right to strike.

Another sobering aspect of the use of permanent replacement workers occurs

in the union certification process. Currently an employer can simply hire loyal permanent replacements, wait until 12 months have passed and the strikers are no longer allowed to vote in union decertification elections, and apply for such an election. This kind of union-busting tactic must be stopped.

At the hearings held by the various committees earlier this year, a question arose as to what workers are covered under H.R. 5. The Subcommittee on Transportation and Hazardous Materials, which I chair, adopted an amendment that clarifies that the bill's provisions apply only to workers represented by the recognized collective bargaining unit involved in the dispute. Similar amendments were adopted by the Public Works and Education and Labor Committees.

The record developed at our subcommittee's hearing and in the actions of the other two committees of jurisdiction clearly shows the serious imbalance that currently exists in the collective bargaining process.

By protecting the rights of labor union members to strike, and ensuring that permanent replacement workers cannot be used as a union-busting tool, H.R. 5 will restore fairness to the collective bargaining process.

In testimony before the various committees of jurisdiction, the administration's representatives have said that President Bush plans to veto this legislation if it is presented to him in its current form. I ask all of you to join me in voting to approve this important legislation, and send the President a clear message: the working men and women of America, the backbone of our Nation's economy, shall know that, should they choose to engage in legal strike activity, their jobs—their livelihood—will be protected.

I urge my colleagues' support for this important legislation. Congress must act now to restore balance to the collective bargaining process and ensure that America's workers, including the railroad workers who are so essential to our Nation's economy, retain the ability to utilize their legal right to strike without needlessly fearing they will have their jobs ruthlessly taken from them.

Mr. Chairman, I reserve the balance of my time.

Mr. RITTER. Mr. Chairman, I yield myself 5½ minutes.

Mr. Chairman, I would like to focus on the well-being of our workers, their jobs, and their communities, and I would like to call the attention of the Members to the realities these days of the competitive economic environment and, frankly, the good news in the ways we as a Nation have responded.

But first let me note that a portion of this bill considered by the Committee on Energy and Commerce, the title amending the Railway Labor Act, is of little practical consequence for the country's major railroads. For economic and contractual reasons as well as regulatory requirements such as engineer licensing, it is just not a practical option for a major railroad to replace any significant portion of its workers.

There has been no replacement of striking workers by a major railroad since the 1960's.

So if H.R. 5 has any real effect within the rail industry, it is going to be on the short-line and regional railroads. These are the entrepreneurs who kept parts of our rail infrastructure alive and kicking by being more adaptive, by being customer-responsive, being more competitive than the major carriers from whom they bought their lines.

These small carriers are the only ones who have any real option to replace strikers in time to affect the outcome of the dispute. And because these small railroads typically function on a thin financial margin, not continuing to operate during a strike could mean the end of the company.

That means the end to the good jobs that they created.

Mr. Chairman, our labor laws provide the right to strike, an inviolable and fundamental right in a democracy. And no one is taking away the right to strike. But the law does not say that all strikes will and must succeed. A strike should always be the action of last resort. But H.R. 5, unamended, brings about a sea change in the labor-management balance. It eliminates hiring replacements in all economic situations, not just unfair labor practice strikes.

Now, today, here, there are mutual incentives not to strike, and lower incidence of strikes is a very positive development over the last 10 years. It is a good sign that the number of strikes are down substantially in the 1980's. Most of it shows that we are learning to work together better as a team fighting not each other but the competition.

Let us stop and ask who loses when there is an abundance of strikes: The workers lose, their families lose, their communities lose. More than anyone else, the American worker, Mr. Chairman, has a vital interest in keeping our industries smoothly functioning, with positive approaches to collective bargaining which encourage cooperation, not confrontation.

We have heard a lot about the United States and South Africa being the only countries not to defend workers from permanent replacement. But what you do not hear is that countries like Japan have basically company unions. Their auto workers are making $50,000 a year. And that Germany prohibits a strike that would grievously hurt a company. And that Germany, Italy, and France all have multiple representation of the same workers from multiple unions.

Cooperation is the name of the game in the countries that are doing well.

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Mr. Chairman, in labor disputes today the stakes are higher than ever before. America is engaged in a global competitive struggle, not just for exports, but right here in our home markets with imports, a war where no quarter is given to companies who cannot compete, and that makes it essential to foster what is balanced and successful about our system in producing nonstrike settlements to disputes. We need fewer strikes, not more.

Now, besides disrupting the balance of the collective bargaining system, as has existed over 50 years, and we have heard the statistics, replacement workers have been hired only to the tune of maybe 4 percent out of the total strikers—permanently replaced. H.R. 5 endangers the growing cooperation of labor and management to meet the global competitive challenge. American workers and managers have worked together during the last year to unprecedented levels, and instead of wasting their precious time and energy and creative juices on fighting each other, we are fighting our competitors.

Mr. Chairman, that is what the quality revolution is all about. It is about teamwork. It is about a situation where each and every worker becomes his or her own best manager. That is the essence of the quality revolution where the distinctions between management and labor are blurred, where we and they become us.

We need to put a premium on cooperation, collaboration, and not confrontation. H.R. 5 spurs more strikes. It makes striking easier. That is not the answer for American workers.

The question is: Will we support legislation that makes strikes easier, or will we promote collaboration instead?

I hope that the House will approve the carefully crafted and precise measures in the Goodling amendment, which serves as a compromise. Otherwise, we will be left with the stark alternatives of H.R. 5—and its wipe-out of 50 years of labor-management practice—or no change in the law.

I would urge my colleagues to oppose H.R. 5 and support the Goodling substitute.

Mr. LENT. Mr. Chairman, I rise in opposition to H.R. 5. Whatever modest gloss the proponents of this legislation may attempt to place on it, this legislation proposes to make a fundamental change in the labor laws that have served this Nation well since the days of the New Deal.

Under 50 years of settled case law, the general labor laws have included the possibility of hiring replacement workers as a legitimate management response to a purely economic strike—that is, a strike not responsive to an employer's own unfair labor practices. This is part of the system of carefuly balanced mutual incentives in our Federal labor laws. If we are

to alter those incentives in a fundamental way, there should be a compelling reason for doing so.

All the empirical evidence says there is no such reason. A recent General Accounting Office report confirmed that only about 4 percent of striking workers were actually replaced.

This tells us that under current law, the issue of replacement simply does not enter the picture most of the time. By approving this bill, we would be introducing major uncertainties into the interpretation of our labor laws for no established reason.

As to the railroad aspects of the bill, the economic reality today is that permanent replacement of workers is not a credible option for any major railroad.

If the possibility of hiring replacement workers has any practical meaning in the railroad industry, it is for the small and struggling short-line and regional railroads—the classic "mom and pop" operations that have kept many marginal rail lines in service. These small companies simply cannot survive a stoppage of any significant duration.

So the question presents itself: Do we want to amend the Railway Labor Act with the sole effect of threatening these encouraging entrepreneurs among our smaller railroads? Clearly not. I urge the House not to approve H.R. 5.

Mr. SWIFT. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. MANTON], a member of the subcommittee.

Mr. MANTON. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act of 1991. This important legislation would prohibit employers from permanently replacing workers who are legally on strike.

Mr. Chairman, during the past 10 years, the growing use of permanent replacement workers has severely undermined the collective-bargaining process. Permanent replacements rob workers of their basic right to strike and give employers an unfair advantage in labor negotiations.

The collective-bargaining process can only work fairly and efficiently for both sides if neither has an advantage. That is how the process worked for more than 40 years and that is how Congress can make it work again by passing H.R. 5.

Mr. Chairman, the opponents of H.R. 5 contend the bill is unnecessary because existing law prohibits employers from firing striking workers. This protection is of no value to the worker who is permanently replaced. For that worker, the result is the same: no job, no income, and no means of supporting a family.

I urge my colleagues to join with me in voting for H.R. 5.

Mr. RITTER. Mr. Chairman, I yield 4 minutes to the gentleman from North Carolina [Mr. MCMILLAN].

Mr. MCMILLAN of North Carolina. Mr. Chairman, H.R. 5 has been called, the Workplace Fairness Act by its supporters, who claim it will restore the alleged imbalance between management and labor. This assertion is pure deception. The reality is that it should be designated the "striker's bill" because that is what it will promote. The resulting imbalance in labor law will be a destructive increase in strikes and a long-term threat to jobs and competitiveness.

Since the passage of the National Labor Relations Act, the rights of strikers to return to their jobs has been protected in unfair labor practice strikes where the NLRB has found the company in violation of labor statutes. In fact, current law entitles a worker to reinstatement, often with back pay, if he participates in an unfair labor practice strike, and it's easy to have a strike designated an "unfair labor practice" strike.

However, in economic strikes, where workers demand higher pay, benefits, job security or other considerations, the right of employers to replace striking workers has been upheld by the Supreme Court in NLRB versus Mackay Radio and Telegraph, 1938. That's been the law for over 50 years.

Overturning Mackay would not restore any shortcoming in labor law, but actually supply unions with a federally mandated advantage at the bargaining table. Proponents of H.R. 5 claim that, "Strikes are used by employers to get rid of both their obligation to bargain and the workers who support the union." This is a specious argument. Since 1939, there have been, on the average, only four to five Mackay cases annually; as many as 12 in 1948 and as few as zero in 1957. You can not logically argue that H.R. 5 should be instituted to combat the over use of Mackay replacements in the past years.

H.R. 5 would amount to company funded strikes against the company's and workers' long-term interests. In reality, strikers are very rarely permanently replaced at all. A January 1991 General Accounting Office Report states that in only 17 percent of all strikes were permanent replacements used, and that only 4 percent of striking employees were replaced by Mackay-justified replacements and in all probability most of that 4 percent was reemployed in different jobs.

Just as labor should be guaranteed the right to strike, an employer must have the right to replace striking workers in economic strikes. No business should be stopped by law from keeping its doors open. Currently, the effect of the Mackay decision is for strikes to be a last resort encouraging negotiated settlements. H.R. 5 removes any economic risk in striking, therefore eliminating any incentive for labor to compromise through negotiating.

It is my belief that the proposed legislation would vastly shift the balance of power in favor of union leaders to an unhealthy degree. The striker's bill will adversely affect our economy and erode our ability to compete. These economic considerations, as well as fairness to compel me to oppose H.R. 5.

Mr. SWIFT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, I speak in strong support of H.R. 5. This important legislation will prohibit the hiring of permanent replacements for striking workers. It will ensure a level playing field in labor relations.

During the last decade, there has been an increasing tendency towards the hiring of permanent strikebreakers during labor disputes. This union-busting activity has resulted in a major imbalance in labor-management relations. Lifelong employees may find themselves out of a job merely because they have exercised their right to strike.

We are all too familiar with the tragedies of Eastern and Continental Airlines. In those cases, Frank Lorenzo used the bankruptcy and labor laws to destroy the careers of many hard working airline employees. Wages were cut, and medical, pension, and other benefits were eliminated. And when the employees tried to exercise their right to strike in protest, Lorenzo hired permanent replacement workers. In the end, Eastern disappeared and the workers—and passengers—suffered, but Lorenzo made a quick exit from the airline business.

Unfortunately, the United States is almost alone in the industrialized world in allowing the use of permanent replacement workers. A recent survey concerning the use of permanent replacement workers in a number of Western industrial democracies found that, with the exception of Great Britain and parts of Canada, none of the countries surveyed allowed employers to hire permanent replacements during strikes.

This is particularly ironic because all Americans take great joy in the liberation of Eastern Europe from Communist control. We should not forget that this liberation started with the brave workers of Solidarity in Poland, who used the strike weapon with great effectiveness. Just as we all oppose union-busting in Eastern Europe, so must we oppose it here.

The legislation before us restores the balance in the collective bargaining relationship and is fair to both labor and management. I urge its support.

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Mr. RITTER. Mr. Chairman, I reserve the balance of my time.

Mr. SWIFT. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. DINGELL], chairman of the full committee.

Mr. DINGELL. Mr. Chairman, I thank my dear friend and distinguished colleague, the gentleman from Wash-

ington [Mr. SWIFT], the chairman of the subcommittee, who has processed this matter with such confidence.

Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act. I want to commend the chairman of the Subcommittee, Mr. SWIFT, for guiding this legislation through our committee, where it was approved by a strong vote.

I also want to recognize the leadership shown on this issue by my good friend and chairman of the Committee on Education and Labor, Mr. FORD, by the chairman of the Labor-Management Relations Subcommittee, Mr. WILLIAMS, and by Chairmen ROE and OBERSTAR on the Public Works Committee.

H.R. 5 is a critically important bill that deserves support from every Member who believes in the right of workers to organize, to bargain collectively, and—when necessary—to strike. Increasingly during the last decade, corporate managers have grown more aggressive in their use of permanent replacements as a tool for union-busting. This trend must be halted and reversed.

I find it troubling and ironic that more than 50 years after the passage of the Wagner Act, there still exist within the ranks of American business those retrograde managers who would deny workers the freedom to exercise their most basic right—the right to withhold their services in pursuit of fair collective bargaining agreements.

For me, there is a element of deja vu in this debate, since I can still recall the time, as a child, when my own father was fired from his job for union organizing activities. Fortunately, we have reached the point where the right of workers to organize is protected by law. But that right means little if workers cannot also exercise freely their concomitant right to strike.

This legislation would have been unnecessary if during the last decade a new breed of management had not decided to declare war on the collective bargaining process. It is their behavior that has revealed the inequities of current law in this area. The striker replacement bill will correct those inequities.

I urge my colleagues to oppose the Goodling substitute, which would gut the protections of this bill, and to give H.R. 5 their full and wholehearted support.

Mr. SWIFT. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I was listening to the discussions, and I want to make several points.

First of all, workers do not strike frivolously. There has to be a good reason for a group of employees to be dissatisfied. Usually the reasons center really around life-saving issues like health care, pensions, and worker safety.

So the question really is this: We all know what happens in cases like this, but what happens to a 50-year-old male who has worked for a company for 30 years and decides, along with his colleagues, that that company's safety conditions are very irresponsible? Should that person who has given his youth to a company not have the opportunity to come back to the company once those situations are corrected? This happens usually when a worker is at the end of the line in trying to negotiate safety conditions.

So, Mr. Chairman, I am very concerned about the real workers and their lives, and I certainly support wholeheartedly H.R. 5.

Mr. SWIFT. Mr. Chairman, I yield myself 30 second just to make this comment:

I heard, I believe, drifting around the room here a little while ago the statement that no economic penalty occurs during a strike to the workers, and I think that comes under the heading of somebody who says, "It's not what you don't know that hurts you, it's what you know that ain't so."

Anybody who has tried to raise a family, pay the mortgage, and put groceries on the table without an income knows there is an economic penalty for a strike, one that this bill does not change. This bill simply says that while you are assuming that economic penalty, somebody cannot go out and give your job away.

With that, Mr. Chairman, I yield 1 minute to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Chairman, if Members live through a bitter labor dispute like the one I am living through now in my district, they know the importance of this bill. Regardless of the position we take on the issue of management and labor, it is time to pass a permanent replacement workers bill and say that you cannot have permanent replacement workers.

There are two quick reasons for that. First of all, it is not good for the collective bargaining process to have permanent replacement workers. After you work through a long list of contentious issues, then you come to one that is sometimes insurmountable. What do you do with the replacement workers that were hired? That issue has got to be settled, and it can be settled by this legislation.

Second, I would argue that for business the hiring of permanent replacement workers is a short-term gain and a long-term loss. How many people here think that Eastern Airlines is now any better off? How many people here are riding Greyhound Bus Lines nowadays? How many people have seen other companies go down because of replacement workers?

Finally, Mr. Chairman, I point out that the law provides a right to strike, but the courts have said they can be permanently replaced. It is time to reconcile these two differences.

Mr. SWIFT. Mr. Chairman, I would inquire as to the respective times remaining.

The CHAIRMAN pro tempore (Mr. PRICE). The Chair will state that each side has 5½ minutes remaining.

Mr. RITTER. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, there seems to be some misunderstanding about the PATCO strike. I would just like to point out for the record that that strike was an illegal strike. That was the air traffic controllers' strike. That was not a legal strike. That strike should not be used as ammunition on behalf of H.R. 5. It is in the Federal law that Federal employees do not have the right to strike.

Ms. OAKAR. Mr. Chairman, will the gentleman yield on that point?

Mr. RITTER. I will not yield on my time. If the gentlewoman wants to take some time on her side, that is fine. We are short on time, and we are just waiting for other speakers to get to the floor.

I just wanted, Mr. Chairman, to clear up that misunderstanding. The right to strike is not what is at issue here, but it is being demagoged by some on the other side that by not voting for H.R. 5 we are removing the right to strike. The right to strike remains inviolable.

Here are some protections that underpin the right to strike:

First, a near absolute prohibition of injunctions against legal strikes, even where the health and safety of a community is being threatened. I can tell the Members that this is not the way it is in some of our European competitor nations.

Here are the other protections: A protection against disciplinary action by the employer for engaging in a legal strike; protection against being fired by an employer for engaging in a legal strike, including the striker's retention of employee status even where replacements have been hired; the frequent availability of public benefits, including unemployment insurance, to strikers; an immediate right to reinstatement where the employer has not hired Mackay replacements and that is in 83 percent of all strike; and in those few instances where Mackay replacements are hired, a continuing right to reinstatement as soon as a job opening occurs.

And we see that happening in plenty of places around the country.

Then there is a right to reinstatement even where replacement have been hired if the employer has committed an unfair labor practice which caused or prolonged the strike.

Here are other rights: There are substantial restrictions on the employer's ability to hire replacements; there is a continuing obligation on the part of the employer to bargain in good faith

with the union even if replacements have been hired; and there is the right to vote in any election on continuing union representation held within a year after the commencement of the strike.

So this whole issue about somehow doing away with the right to strike if we do not pass H.R. 5 really is a red herring.

Mr. Chairman, I yield 2 minutes to the gentleman from New Hampshire [Mr. ZELIFF], who has been the owner of three businesses over a period of 15 years.

Mr. ZELIFF. Mr. Chairman, I am from New Hampshire, and we have three small businesses. We have them currently, and we have met payroll for the last 15 years. One is a country inn, one is a small restaurant, and one is a gas station and convenience store. We have 52 employees, and I can say frankly that I have to go in on a Saturday night when the dishwasher left and do dishes myself, so I know what it is all about.

We have a chef, we have key individuals. We just cannot call out and bring people up to replace these individuals. Even the amendment process of 8 weeks would be a disaster for our businesses.

Small business in general is not like the big business that we may read about. We are talking about moms and pops. We are talking about rural areas. This bill, H.R. 5, would be an absolute disaster to the ability of a small business to be successful.

□ 1340

Take a look at any one of those roles.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield for a question.

Mr. ZELIFF. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, does the gentleman have a union at any one of these three businesses?

Mr. ZELIFF. Do I have a union representing me at any one of those three businesses? No, I do not.

Mr. FORD of Michigan. Mr. Chairman, then this bill does not apply to the businesses of the gentleman from New Hampshire.

Mr. ZELIFF. Mr. Chairman, the gentleman is incorrect. I have been a past president of the New Hampshire Hospitality Association, I have been involved with the National Restaurant Association, and I have been a past president of the New Hampshire Travel Council. I am speaking now as a Member of Congress on a much broader point of view.

Mr. Chairman, I understand where the gentleman from Michigan [Mr. FORD] is coming from, but it does not negate what I have been saying.

Mr. Chairman, what I am saying is as a representative of small business, this would be a disaster for anybody that has a small business, and their ability to run their business successfully.

Mr. SWIFT. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. ECKART], a member of the committee.

Mr. ECKART. Mr. Chairman, today I rise to express my strong support for H.R. 5, the Workplace Fairness Act. In my district of northeastern Ohio, I have many constitutents who have been permanently replaced. Their stories cry out for justice and for equity.

I have heard from far too many constituents who no longer have jobs to believe that the use of permanent replacements is an anomaly. It's not an anomaly, it's an unfair weapon being used to break the spirit of hardworking everyday Americans.

I would like to relate the story of one such American. It involves a women in Chardon, OH, who is 56 years old, single, and living alone. The company she worked for hired permanent replacement workers. For some time, she lived on her life savings. Then she had no income. Eventually her telephone, electricity, and heat were turned off. She was even notified that she was in danger of losing her home. She could not afford to feed herself and was receiving food from a nearby food kitchen; however, as a diabetic she needed to follow a careful diet which was not provided by the kitchen.

Subsequently, she blacked out, striking the floor with her head hard enough to put her in a coma, where she lay for 3 days before a neighbor discovered her. She was taken to one hospital and then airlifted to another where she remained 18 days in intensive care.

Here is the real life example of a worker affected by the practice of employers hiring permanent replacement strikers. She has lost her savings, her health, and is in the process of losing her home. The stress of not having an income and not having a job have all contributed to her economic and physical deterioration, and the result for America is one less productive citizen.

Opponents of this legislation claim that there is a difference under current law between permanently replacing a striking worker and firing a worker. But if I may interject the words of an old Supreme Court Justice, "if it looks like a duck, walks like a duck, and sounds like a duck, it must be a duck."

Well Mr. Chairman, permanently replacing a striking worker quacks like firing a worker. Like the woman I described previously, the end result is the same, and in her particular situation, life threatening.

This is a fairness issue. As a worker not receiving an income the difference is merely semantical when it comes to deciphering whether you are without an income because you were fired or permanently replaced. It is disingenuous to argue that there is a difference.

I ask my colleagues to look beyond quacking semantics and vote for what is right and what is fair. Let's put a stop to this outrage to our democratic society and stand up for the average American by passing H.R. 5.

Mr. SWIFT. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey [Mr. PAYNE].

Mr. PAYNE of New Jersey. Mr. Chairman, the Strikers Fairness Replacement Act is one of the most crucial issues that will affect the lives of almost all American employees as we enter the next century.

Since 1935, the National Labor Relations Act has protected the right of workers to join unions and engage in collective bargaining. One of the most important protections of the act is the prohibition of firing workers for exercising their right to join or help organize a union.

Ironically, only during a strike is it legal to replace employees for supporting union activity.

Mr. Chairman, it is crucial that when workers go on strike to gain improved working conditions that they are not faced with the threat of being replaced.

Permanently replacing workers who strike was deemed lawful by the U.S. Supreme Court 53 years ago in the Mackay Radio case.

Indeed in the past years some employers have not hesitated to effectively fire many striking workers, and that is not fair. This is unfortunate because now is the time to ensure that labor and management try and work together if we want to remain competitive in the global market.

Moreover, the effective right of workers to withhold their labor as leverage during negotiations is an essential element of our bargaining system. As workers have felt increasingly unable to strike, faith in collective bargaining has been seriously undermined.

Yet, the Strikers Fairness Replacement Act can help to restore that faith in the system. It will reverse the Mackay Radio case by prohibiting the hiring of permanent replacements during a labor dispute and prohibit discrimination against striking workers returning to their jobs once the labor dispute is over.

Mr. Chairman, I support this legislation wholeheartedly because it provides a clear statement in the law that workers will not be permanently replaced during a strike and American workers deserve that support.

I cannot emphasize enough the importance of ensuring that when workers go on strike to gain improved working conditions that they are not faced with the threat of being replaced.

The right to strike is a part of our democratic heritage. Indeed working people have earned the right to have a voice in the determination of their working conditions.

Mr. SWIFT. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Mr. Chairman, I rise in opposition to H.R. 5, the striker replacement ban.

In opposing this bill, I am not opposing labor unions or the rights of union members. Unions have contributed much to our Nation. Without unions, the American workplace would be, in many respects, more dangerous, less rewarding, and even less humane.

In part because of union representation, employers and employees have reached a delicate negotiating balance. Drastic changes such as those proposed by this bill would shatter that balance and give an unfair advantage to unionized employees.

We do not need to tinker with a system that is already fair.

In addition to its effect on overall labor-management relations, this bill would also have a devastating impact on rural health care.

In conjunction with the recent Supreme Court decision in American Hospital Association versus NLRB, which found that eight separate subgroups of hospital employees could form eight separate unions, H.R. 5 would drive up costs and limit access to service.

If any of the eight unions were to strike, an entire hospital would be shut down. In rural areas, there is no pool of skilled workers to come in and temporarily replace striking workers in an attempt to keep the hospital running.

Most rural citizens do not have the luxury of simply going to another hospital. They cannot afford even a temporary closing of a local hospital.

What if, to avoid that problem, hospital administrators give in to excessive labor demands? No one can doubt that increased costs would result and that these costs would be passed on to patients who are already seeing their health care bills skyrocket.

Even if you can overlook the fact that H.R. 5 allows workers to strike for economic reasons without fear of losing their jobs, remember that this bill will limit health services in areas that are already badly underserved.

I urge my colleagues to vote no on final passage of the strike breeder bill.

Mr. SWIFT. Mr. Chairman, I yield 1½ minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, today I rise to express my strong support for the Workplace Fairness Act.

The National Labor Relations Act was enacted to bring a balance to the collective-bargaining process so that both labor and management could work out their differences. Unfortunately, over the years, this balance has eroded and is now tilted in favor of management.

Under the law, when labor and management meet at the bargaining table and negotiations reach a standstill, employees have the right to strike and employers have the right to hire replacement workers. Mr. Chairman, I have never met a worker who wants to strike. Strikes are called out of desperation—they are a last resort. When workers strike, they lose their paycheck, their families suffer.

Employers have always had the right to hire replacement workers to protect and continue their business operations. However, over the last decade, more and more employers have opted to hire permanent replacement workers, thereby bypassing the collective-bargaining process and, more importantly, throwing experienced striking workers into unemployment lines.

If employers can simply hire permanent replacement workers, there is no incentive to negotiate in good faith. Employees then become afraid to exercise their right to strike in order to achieve better working conditions, wages, and benefits. This is not what Congress intended.

The Workplace Fairness Act simply prohibits employers from hiring permanent replacement workers during a strike. They may continue the longstanding practice of hiring temporary workers, but they would still be required to continue negotiations with striking employees. In other words, this legislation protects the collective-bargaining process.

Additionally, this legislation does not affect nonunion businesses. Language has been included to ensure that only union shops which are properly represented would be covered under this act.

Mr. Chairman, it is time for this Congress to stand up for the American worker. This legislation reaffirms Congress' long-standing position that workers have a right to strike without fear of being fired. Workers deserve nothing less. I urge my colleagues to support America's working families by passing H.R. 5.

Mr. RITTER. Mr. Chairman, I yield our closing minute to the distinguished gentleman from Louisiana [Mr. TAUZIN], a member of the subcommittee and the full committee dealing with this issue.

Mr. TAUZIN. Mr. Chairman, if we were to decide this issue on anecdotal hard case evidence, we could make some bad decisions today. However, we should decide this issue on the basis of what is good national policy.

A National Labor Relations Act that has been in place for many years, designed to promote balance in the discussion between management and labor issues, designed to encourage collective bargaining and discourage strikes, is working. It is working. There are fewer strikes in America, big, long-term strikes, in the last decade, than there were in the previous decade. Something is working.

Is there a shift in the balance? Yes. As labor surpluses develop, management gets a little leverage in the negotiations. As labor shortages develop in the marketplace, labor gets an additional leverage in the marketplace.

Mr. Chairman, if we have had problems, it is only in that cyclical evidence of labor shortages and labor surpluses. The good news for labor is that the NLRA will work and continue to work to their benefit as labor shortages begin to develop in America, and all indications are that labor shortages will be upon us as we turn this century.

Mr. Chairman, the act works. There are fewer strikes today. Let us continue to keep a good act working for the sake of collective bargaining.

□ 1350

Mr. SWIFT. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, we have heard that if this bill passes, chaos will result. Chaos will result if we restore a practice that pertained for 40 years in this country, 40 years, I repeat, that were a period of unprecedented prosperity, 40 years that were not a time of particular labor unrest.

There will be no chaos if this bill passes. If this bill passes, there will be again balance for those Americans who do this Nation's work.

I urge my colleagues to vote for this bill.

The CHAIRMAN pro tempore (Mr. PRICE). The time is now under the control of the gentleman from Michigan [Mr. FORD], who has 15 minutes remaining, and the gentleman from Pennsylvania [Mr. GOODLING], who also has 15 minutes remaining.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I have a prepared statement which puts forth in very passionate terms my support for this bill, but I would like to deal with a couple of the issues that I have heard the opponents of this legislation raise.

The first one is that somehow settled labor law from 1938 is now being changed, thereby taking a balanced relationship created through the National Labor Relations Act and weighting it heavily on the side of labor from the present balance that the law now has.

I think that comes from a fundamental ignorance of labor law and labor history. In 1938, when the Mackay decision came out, saying that employers could replace economic strikers, the law had absolutely no provision for union unfair labor practices. There was absolutely no prohibition against a closed shop. Secondary boycotts were allowed. Secondary strikes were allowed. Hot cargo agreements allowing agreements to prohibit the working on a product from an employer who was under strike, all of those were allowed.

When in 1947 the Congress at that time in its wisdom chose to override President Truman's veto and pass Taft-Hartley, we had a whole series of changes in that law. Secondary boycotts prohibited. Hot cargo agreements prohibited. A series of unfair union labor practices set forth in the law, a variety of restrictions. No ground swell occurred at that time to change the Mackay case because employers were

not going through the tactic, the device, the ultimate sanction of permanently replacing striking workers. They were not making the substantial erosion on the right to strike, in the workers' right to strike.

For the gentleman from Pennsylvania [Mr. RITTER], who controlled the time earlier to say nothing in our opposition to H.R. 5 diminishes our continued support for the legality of the right to strike becomes hollow words when in fact the ultimate sanction, the ability to fire strikers by permanently replacing them erodes all of the statutory protection of the right to strike and against discrimination.

It truly becomes, the right to strike has become the right to quit. That is not what we intended in the Wagner Act. That is not what a majority of Members in this House wanted to continue. That is why H.R. 5 is so desperately needed.

Mr. Chairman, I rise in strong and proud support of H.R. 5, the Workplace Fairness Act.

If ever there were a piece of legislation whose time has come, this is it. In fact, as I review the sorry history of the past decade, I can only conclude that this legislation is long overdue.

I have watched with growing dismay as American workers have agreed to major givebacks of hard-won wages and benefits, on the understanding that they would share in the turn-around when their companies' profitability was restored. Instead, when the time has come, they have been confronted with ultimatums. Take it or leave it, because we know that if you choose to strike, we can permanently replace you.

Clearly, an increasing number of employers view collective bargaining not as a means of negotiating wages and working conditions, but rather as a means of recruiting a younger, lower paid new work force—comprised, they doubtless hope, of workers less likely to join a union.

Leadership at the national level could have signaled to American employers that their interest, as well as the Nation's lies with retaining a loyal and experienced work force. Instead, Ronald Reagan kicked off the 1980's by firing the air traffic controllers. Granted, theirs was an unlawful strike, but I don't think for 1 second that that was the sole basis for President Reagan's action. He wanted to send a strong and sure signal to American workers that the decision to strike might cost them their jobs, and to American employers that they could in effect fire striking workers, just as he did, with impunity.

As a result, what has for over 50 years been a rarely exercised loophole in the law, has now wreaked havoc on the lives and well-being of hundreds of thousands of American workers and the communities in which they live.

We are faced with a legal absurdity: Under the National Labor Relations Act, employers cannot discriminate against employees exercising their legal right to engage in an economic strike, yet employers can hire permanent replacements for their striking employees. New workers promised permanent positions are vested with an enforceable cause of action. And junior striking employees who cross picket lines may be retained and offered superior positions in preference to more senior strikers.

Don't tell me this doesn't destroy the right to strike.

As a former labor lawyer representing unions 20 years ago, I have followed closely the accelerating erosion of the remedies workers could avail themselves of when faced by employers who refuse to bargain in good faith. One by one, these remedies have been weakened. An entire new generation of lawyers has developed whose stock in trade is mastery of the delaying tactics which the Board has tragically sanctioned.

And of course over the years, the range of countervailing economic weapons has now almost thoroughly been denied to workers—from secondary strikes to consumer picketing to hot cargo agreements. All this at the same time that we preach the gospel of economic ambition—for employers only, so it seems.

Little wonder that, in the words of the committee report, "today workers have not so much a right to strike as a right to quit."

Tragically, the due bills have come in from a decade of Reaganomics, of takeovers, leveraged buyouts, and an entire range of economically and socially unproductive economic activities pursued by owners and investors with no loyalty to employees nor stake in the community.

Workers these days are expected to appreciate having a job at all. Concerted activity to improve wages and working conditions is seen as an act of ingratitude.

I hope that in considering today's vote, my colleagues will remember all the times we have as a body lamented the decline in U.S. productivity and competitiveness. Consider the terrible price we pay as a Nation—not to speak of the price paid by thousands of individual American families—when loyal, experienced American workers are replaced, and often at best underemployed in new, lower paid, and lower skilled jobs, if they are employed at all.

I do not want our children to have to relive the terrible history that pitted Americans against Americans, workers against their replacements. We understand, and abhor, that history as we understand it from our parents and grandparents, and from our history books. Let us restore the means for peaceful resolution of worker and employer differences promised by the National Labor Relations Act. I urge passage of H.R. 5.

Mr. GOODLING. Mr. Chairman, I yield 4 minutes and 30 seconds to the distinguished gentleman from Michigan [Mr. HENRY], a member of the committee.

Mr. HENRY. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to H.R. 5. All of my colleagues have been faced in our districts with labor-management confrontations, sometimes involving merely economic issues, other times unfair labor practice issues, and often and unfortunately very, very contentious and ugly situations.

We should make very, very clear that this legislation does not restore past labor practice relative to labor-management confrontations, as previous speakers have claimed. This legislation represents a dramatic reversal of the manner in which this Nation has historically handled labor-management conflicts.

Reaching back to the Wagner Act of 1935, in which the distinction between an economic strike and an unfair labor-management practice was clearly established, reaching back to the Taft-Hartley Act in 1947, the distinction between the way in which the rights of labor are handled in terms of restoring labor's position to a job, between an economic strike versus an unfair labor-management practice on behalf of capital or management is clearly established historically in this country. Current law distinguishes between a strike involving an unfair labor practice, where the rights of strikers to return to their jobs are fully protected with the unqualified right to return to the job versus a strike over economic issues where management risks interruptions in its productivity and the burden of training new workers against labor's risk of job loss.

And even when a strike is over purely economic terms and does not involve unfair labor practices, labor still retains a right, a preferential right to reinstatement, although not an unqualified right to reinstatement.

Economic strikers already enjoy preferential rights to reinstatement. What this legislation seeks to do is to give an unqualified right to reinstatement for economic strikes in addition to that which is already enjoyed for strikes involving unfair labor practices.

Employees will be free to strike repeatedly, no matter how excessive their demands, knowing their jobs would always be waiting for them.

Take the International Federation of Flight Attendants versus TWA situation, for example. I am no fan of Frank Lorenzo, but on the other side we have got problems, too. In the TWA flight attendants' case, labor admitted in the record while before the court and before the NLRB that their demands were

four times what the union itself admitted would be adequate to fill the jobs in dispute, four times what would be necessary.

We have in a capitalist society a situation in which labor has to contend with capital. And we want a level playing field. But when we deal with the issue of labor versus capital, we also have to remember that in a global economic environment or even within a national economy, capital also has to compete against capital and labor has to compete against labor.

H.R. 5 leaves us with a situation where labor does not have to compete with labor but capital still has to compete with capital. That will work in monopolies, whether it be the monopolies that come about because of some special economic positions and economic structure or industrywide regulation, but it will not work in global markets.

We hear talk of employers breaking unions. Any attempt of an employer to break the union is in and of itself an unfair labor practice. And once such a practice has been determined, that worker already enjoys under existing law an unqualified, I repeat, unqualified right to that job.

I will return to this later, Mr. Chairman, because I have much more to say on the issue.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Chairman, thank you for the opportunity to speak on this important legislation.

There are millions of workers who are or will be watching this debate. They search for a fair deal: decent health care when needed, reasonable wages to feed themselves and their children, and a workplace which is safe from horrible illnesses such as black or brown lung disease, chemical poisoning or accidents which mutilate one's body. When organized labor wins these rights, all working Americans enjoy the benefits. This is all collective bargaining attempts to achieve.

Yet this is precisely what Frank Lorenzo and his type are trying to destroy with their recent, vicious attacks.

Some opponents of this bill argue that the sky will fall down and that the Earth will open up if this legislation passes. Such is not the case. This bill merely restores the pre-1980 right of employees to lawfully withhold their labor, which is their fundamental right for a decent life in a democracy.

Let me give you one example of the importance of this bill: Since the Presidential action against PATCO, which violently changed the lives of all workers, certain companies have advertised for permanent replacements prior to an actual strike. The results as seen across this country, have been devastating. The Greyhound Bus strike is a classical example. Communities are torn apart. Peoples' lives are destroyed. And companies which have been pillars of the community are ruined.

I urge my colleagues to support H.R. 5.

Finally, the way to make America commercially strong is not by lowering our standard of living, but by increasing our productivity. Japan, Germany, and other countries which are raising their production all have legislation such as H.R. 5—none of them allow legal strikes to be busted by permanent scabs. We, too, can increase production. It won't happen by busting unions.

□ 1400

Mr. GOODLING. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Oklahoma [Mr. EDWARDS], who is not only a member of the committee, but is a member of leadership, and he is also a member of the task force involving this issue.

Mr. EDWARDS of Oklahoma. Mr. Chairman, every American worker knows that this country is at war. It is a war of imports and exports. It is a war of international trade balances. It is a war in which the weapons are economic growth and productivity and competitiveness.

America has grown out of the Dark Ages in which labor and management engaged in constant battle which closed shops and factories and brought American productivity to a standstill.

For more than 50 years, the law has maintained a balance between labor and management, 50 years in which America surged to leadership of the industrial world, 50 years of unprecedented technological growth.

For half a century Democrats and Republicans alike have maintained this balance. This is a balance that has been supported by Ronald Reagan and Franklin Roosevelt, by George Bush and Harry Truman, and by one Democratic Congress after another. It would be absolute folly to upset this balance now to encourage more strikes, more work stoppages, more lost productivity now when we face unprecedented economic competition from both Asia and Europe.

The opponents of this legislation are not the opponents of the American worker or of labor. The House Republican Policy Committee, of which I am the chairman, stated in a formal policy statement on this bill that House Republicans recognize the existing legal right of workers to strike. We commit ourselves to maintaining a balance in labor-management relations. We support the American worker, and we support fairness.

This legislation supports neither.

Why is the Democratic leadership trying now to change the law?

According to GAO, there has been no change in labor-management relations which calls for such a radical revision of labor law. Permanent replacement workers are now and always have been rare.

H.R. 5 is not about fairness. It is intended to create an inequality between labor and management. H.R. 5, amazingly, is so unfair, so outrageously extreme that it would even allow strikers who had engaged in violence to throw out of work the very victims of their violence.

In what other instance would you even begin to consider legislation that could do this to your constituents?

There are other serious consequences to this bill. For some workplaces, closing the doors is not an option. Hospitals cannot simply close down and wait until the strike is over.

Temporary replacements are not practical in a hospital. There will be no choice but to give in to whatever demands are presented or to close the doors. So health care, already excessively costly, would become more so.

Make no mistake, a vote for H.R. 5 is a vote to increase our Nation's health care costs or to close hospitals, and both will mean less health care for more people.

H.R. 5 hurts the majority of American workers, small businesses, the national economy, local community health and safety.

Who then does it help if it hurts the general interest? To whom is H.R. 5 fair? This bill has one purpose. It helps the special concerns of union management. To union management, H.R. 5 is more than fair.

No, H.R. 5 is not about fairness. It is about more strikes, lost jobs, lost rights, a less competitive America, and endangering the health and safety of our constituents.

I urge all of my colleagues to vote no.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. AUCOIN].

Mr. AUCOIN. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of the bill before us today.

I would like you to give some thought to the plight of the working men and working women of this country. Over the last decade the purchasing power of middle-income working families has decreased. Over the last decade the tax burden on middle-income working families has increased. Now, we seeing a growing effort to replace people when they simply try to assert their economic rights, by withholding their labor when they have items in dispute with management.

Mr. Chairman, those rights one being stripped away from working by the hiring of replacements, by the hiring of scabs.

Is it not about time—in this era of a Michael Milken, in this era of cor-

porate raiders, in this era of the rich getting richer and the poor getting poorer, in this era of middle-income people getting short shrift all the way around—is it not about time for this Government to respond to the plight of the middle-income working families of this country? I think it is.

There will be a time, I hope, when in this Congress reserves the shift of wealth from the rich to the middle income. The richest 5 percent of this country have doubled their share of the national wealth in the last decade while the middle-income working families have had their purchasing power decreased.

But at the very least, for now, we should say to working families, working men and women in this country that this is not pre-Lech Walesa Poland, this is not Albania. We believe in free labor where American working men and working women can use their one tool to assert their economic rights, withholding their labor without being worried about government either tyrannizing them and preventing them from doing that—or, worse, hypocritically allowing employers to hire replacements and take their jobs away from them.

My friends, vote for Middle America. Vote for working families. Stand up for the working class of this country and pass this modest piece of legislation and do it today.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act. This bill will amend the National Labor Relations Act to make certain employees have the right to participate in collective bargaining, and the right to strike without the fear of losing their jobs to permanent replacements hired during the collective bargaining process.

With the threat of being permanently replaced, or fired, while taking part in a legal strike, workers do not truly have the full rights promised them by the National Labor Relations Act. There can be no good faith bargaining between workers and their employers in a labor dispute, when the employer has a trump card such as the threat of permanently replacing those same workers.

In the last decade we have seen an increase in the number of permanent replacements. In the *Trans World Airlines* v. *Independent Federation of Flight Attendants*, 489 U.S. 426 (1989), 4,000 flight attendant jobs hung in the balance during a labor dispute. Eventually, workers were given the options of accepting a substandard contract or losing their jobs.

The same is true of what occurred during the labor disputes between 9,000 Greyhound workers and their employer. Workers took a 10-percent cut in wages in 1987, followed by further cuts of up to 25 percent in benefits and wages. Greyhound refused good faith negotiations.

Roughly 6,000 workers went on strike and in the end, Greyhound told strikers who offered to return to work, that only 600 slots were available to them. Their jobs were gone.

After an exhausting 146-day strike between 2,300 workers of the New York Daily News and its former owner, the Tribune Co., new owner, Robert Maxwell said:

> What matters in the end is * * * we not only restored your jobs, but we proved that naked capitalism cannot win if it goes about destroying true collective bargaining.

During strikes, workers give up pay and benefits. Striking is their last option. Let us restore to them this vital, legal method in collective bargaining.

□ 1410

Mr. Chairman, just recently I found a snapshot which I have enlarged on this Xerox paper. It is a snapshot of my father on the left in the 1950's, on behalf of the Sheet Metal Worker's Union, striking in the South Bronx. My father always said to me that was the only true power he had in this society. H.R. 5 continues that ability for workers to defend themselves in this society.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. BOEHNER], a member of the committee.

Mr. BOEHNER. Mr. Chairman, supporters of H.R. 5 keep stating that the debate on this issue should focus on fairness. The self-proclaimed party of fairness has put forward H.R. 5 to bring equality to an allegedly unfair situation—Federal labor law which allows the use of replacement workers.

But what is fair? According to Webster's Dictionary, fair is defined as "free from self-interest, prejudice, or favoritism, free from favor toward either or any side." Supporters of H.R. 5 claim that the use of replacement workers is unfair to workers because it tilts the balance in labor-management negotiations in favor of management.

So the question put to us today in this debate is this: Does Federal labor law act in an unfair manner, by favoring management over labor? Though the majority party thinks otherwise, the answer is clearly no. The intent of the National Labor Relations Act is not to predetermine an outcome, but to bring both sides together to negotiate. The law acts to balance the rights of each party, giving both an incentive to settle their differences.

In a strike involving economic issues, labor and management are both given an ultimate weapon to protect their rights. For labor, their weapon is the right to strike. And this right is counterbalanced by management's right to continue operations through the use of replacement workers.

Using these weapons entails great risk for both sides. If employees strike for more money or better benefits, an economic strike, they must be ready to risk their jobs if others in the workplace find the pay and benefits the strikers have rejected as acceptable. It is very important to note that replacements can only be hired at the last best offer made to the union. If replacement workers will not take this last best offer made to the union, then management is making an unfair offer.

If H.R. 5 were to become law, all of the risk associated with going on strike would be eliminated. Instead of a balanced negotiating situation, companies would be faced with these stark choices: Agree to all union demands, no matter how outrageous; attempt to hire temporary employees to keep their business running; or refuse to meet labor demands, and shut down operations.

So Mr. Chairman, I ask what is fair about giving union members more rights than 85 percent of the work force that chooses not to join a union? What is fair about giving unions more rights than companies? What is fair about forcing every small business in the country to deal with a recognitional strike? What is fair about denying other employees a job that union members refuse to take? If you are truly concerned about fairness, you will vote against H.R. 5 which is not fair by anyone's definition.

Mr. FORD of Michigan. Mr. Chairman, I yield 1 minute to the gentleman from Philadelphia [Mr. FOGLIETTA].

Mr. FOGLIETTA. Mr. Chairman, I rise to voice my strong support for H.R. 5, the Workplace Fairness Act, and against Goodling.

This issue is about returning parity to the bargaining table in labor disputes. Who knows better about compromise, bargaining, and negotiation than the men and women in this room?

We know that negotiations are crippled if parties to a dispute do not have potent bargaining chips.

We know that the most significant—the only—viable bargaining weapon in organized labor's arsenal is the right to strike.

And we know that present law tears the teeth and guts out of the right to strike.

In the 1980's—the decade of the scab—we saw it time and time again. The air traffic controller's strike. Greyhound. The New York Daily News, where replacement workers were on the job 20 minutes after a strike began. And Frank Lorenzo's war against the men and women who made Eastern Airlines fly.

This legislation does not mean that employers cannot hire temporary replacements and try to keep their business going. Rather, it forbids the hiring of permanent replacements.

I am proud to say that I introduced one of the first bills designed to stop

this practice. And I am proud to support this legislation today. Let's return stability to the bargaining table so American workers can negotiate for a fair deal.

Mr. FORD of Michigan. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, after listening to the general debate, it is obvious that there is a lot of confusion, so I would like to bring it down to 4 points. I think these 4 points are things that H.R. 5 will not do and does not do.

It will not cover mom and pop stores, because they do not have unions. It will not cover nonunion workplaces. CRS has written a complete study of that at the request of people opposing this bill, that verifies this. It will not prevent an employer from hiring replacements for the duration of a strike. It only prevents them from hiring permanent replacements. It will not put U.S. companies at a disadvantage, since all of our major competitors prohibit the use of permanent replacements.

Those are the main four things we have heard about today that this bill does not do and will not do. I hope that the Members, when they cast their vote, will not be confused by the confusing array of contrary information they have heard here, and what their constituents have heard from various special interest organizations, sending untrue information into their districts.

Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. KOPETSKI].

Mr. KOPETSKI. Mr. Chairman, as an original cosponsor, I rise in support of H.R. 5 the Workplace Fairness Act.

The 1980's rise to a new phenomenon in the collective-bargaining process: the permanent replacement worker. According to General Accounting Office, in 1989, management hired permanent replacement workers in 17 percent of all strikes. In roughly one-third of all strikes, employers threatened to hire permanent replacements. To me this is a discomforting trend.

This Nation prides itself on maintaining a platform for fair labor-management relations. The National Labor Relations Act of 1935 and the Railway Labor Act of 1928 provide a neutral framework for the collective-bargaining process.

More importantly, NLRA promises workers a fair chance to join unions, to bargain collectively, and if no agreement can be reached, to participate in a peaceful strike to further their bargaining goals. These are fundamental rights to American workers and, Mr. Chairman, these rights are now in jeopardy because of the use of permanent replacement workers.

It is fundamental to the collective-bargaining process that each side has an advantage on the other. On the workers' side, he or she can withdraw their labor and the employer loses money. On the management side by striking, management withdraws the workers' income. This balance of power between the two encourages settlement. Today, through the new and increased use of permanent replacement workers the balance is upset. The advantage is to management, and a major incentive to settle is taken away.

What is the difference between firing a legally striking worker and permanently replacing that worker? Not a whole lot. In the end, both the fired striker and the permanent replaced striker have no jobs and no paychecks.

Clearly, management is using the permanent replacement and the threat of permanent replacement as a means of once again tilting the delicate balance of fair collective-bargaining process to the side of management.

I am strongly committed to keeping a balanced scale in the collective-bargaining process. H.R. 5 restores the balance. I support the American worker.

Mr. Chairman, I commend the chairmen of the three committees for working so diligently to bring this important piece of legislation to the floor. I urge my colleagues to vote for the Workplace Fairness Act and send a message that this Congress also supports the American worker.

□ 1420

Mr. GOODLING. Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, first of all, let me repeat what I said in committee. The appearance of a scab means a healing process. In my opinion, as the National Labor Relations Act has evolved over a period of years that is exactly what they had in mind. They were not trying to produce confrontation. They were not trying to bring about unrest. They were trying to bring about a peaceful solution to problems.

Now, we have a tendency in the Congress of the United States to say whatever we want to say over and over again, no matter how many facts we may have to back that up or not. That is unfortunate, but it happens.

Today we have heard over and over again people trying to link somehow or another H.R. 5 with the air traffic controller firing. There is no connection whatsoever between the two. You were talking about a public sector group who knew by law that the President of the United States is required by law to fire them if they strike, because it is illegal; so it has nothing to do with the private sector in H.R. 5 whatsoever.

In fact, he bent the law. He begged them several times. He should have fired them on day 1 if he was going to go by the law, but he begged them over and over again to come back to work, come back to work. So it has nothing to do with H.R. 5.

A GAO study, we hear over and over again that somehow or another now we have all sorts of permanent replacements being put into place, something different than ever happened before; but yet what we really know is that from the information the GAO could get to make their study, that in 1985 there were only 4 percent permanent replacements, and in 1989 there were only 3 percent.

And listen to this. Many of those were reinstated, because the law requires that they be reinstated under certain circumstances.

Do not be fooled about who is covered and who is not covered and who it will affect and who it does not affect.

Let me tell you, if you pass H.R. 5, why would not everybody in the country join a union? You have unparalleled protection. Never before have we treated union and non-union workers differently. Here we do it for the first time. We treat union and non-union workers differently, and so you encourage everybody and their brother to become a member of the union.

Some have said that we just restore what was law. Read the text. You are not restoring, you are adding to; so read the text so you understand what it is we are doing.

Let me just close by saying that as Members of Congress we were sent here to represent 100 percent of the American work force. We were not sent here to represent 12 percent or 88 percent. We were sent here to represent 100 percent. We were not sent here to represent those who have a lot of money in their kitty. We were sent here to represent all workers in the United States, and that is why H.R. 5 is so dangerous. That is why we cannot make a differentiation.

I know what they say, with an amendment we have done such and such. Do not kid yourself.

Let us vote down H.R. 5. Let us look at some substitutes. Let us try to make a level playing field if we think there is not one, but let us not destroy a great relationship that is growing between labor and management, growing primarily because both sides know they need each other to survive.

Then last, let me also say that as we look at this legislation, we want to make sure that we do not cause employers to lose their businesses and employees to lose their jobs, because those jobs go elsewhere.

Think carefully before you vote.

Mr. FORD of Michigan. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Chairman, I rise in support of H.R. 5, which is equity for all Americans.

Mr. Chairman, there are those who say that H.R. 5 would give organized labor the ability to shut down a business if that business does not meet their demands. Nothing could be further from the truth. If H.R. 5 becomes law, employers could still conduct their business by hiring temporary employees; they just could not hire permanent replacements.

Today in the workplace, actions by a few firms—like Greyhound and Frank Lorenzo's Eastern Airlines—have sent all Americans the message that the right to strike now means the right to be permanently replaced. GAO found that employers now threaten to hire permanent replacements in nearly one out of every three strikes. Today that threat is implicit in every American workplace.

That hurts American business because it encourages a casino mentality of junk bonds, and golden parachutes. It encourages raiding pensions and employee health benefits rather than providing the customer with better products and services.

The administration is fear-mongering when it claims that H.R. 5 hurts business. The fact is H.R. 5 restores balance. It builds teamwork. Japan, Germany, and other nations compete using teamwork rather than replacement workers. As owner-operator of a small business for over two decades, I know how vital such teamwork is. I urge my colleagues to join me in supporting this important legislation.

Mr. FORD of Michigan. Mr. Chairman, I yield the balance of our time to the gentleman from Montana [Mr. WILLIAMS], the chairman of the subcommittee who handled this bill.

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, today we have heard what I would call camouflage words, buzz words, words designed to focus on the extremes, rather than on the policy. Such tactics tend to polarize people, not to enlighten them. Perhaps we can get away from principles such as those and talk about those who this bill is designed to help, real people.

Her name is Lori Anderson. She and Jerry Anderson are married. Jerry used to drive for the Greyhound Co. Lori says, "For 15 years I've been used to having him out there on the road, didn't see a lot of him, but we were living a fairly good life."

She noted that when the leveraged buyouts in the go-go economic days of the 1980's came, Greyhound promised them a better life by saying that when Greyhound does better, you will do better; but when the leveraged buyouts backfired, Jerry and Lori Anderson found out that they were required to pay the bills. So after long labor-management negotiations, Jerry Anderson exercised that one right that all Americans have, and that is to voluntarily withhold his labor. When he did, when he stood up on the parking lot, in the driveway, and exercised that other great American right of holding a protest sign, when he did it, he was fired.

Today, Jerry works for a bakery. He makes 50 percent of what he did. Their family is greatly troubled and they wonder if their lives have not been ruined by simply exercising their right of free expression.

His name is Ted Ramirez. Ted is from Miami. He is 55 years of age. He worked for Eastern Airlines half his life. He watched Eastern Airlines executive Frank Lorenzo practice leveraged buyouts and take advantage of the go-go unregulated economic schemes of the 1980's.

Then Ted Ramirez and 24,000 other workers, having exhausted all their collective bargaining opportunities, went to the one American right they had left. They withheld their labor. They stood outside the airport and said, "Frank Lorenzo is unfair. We are being asked to pick it up for Frank Lorenzo by having our salaries cut, and we have already had our salaries held even or cut, and now Frank Lorenzo wants 47 percent more out of our paychecks."

So they went on strike and they were fired.

Today, Ted Ramirez sells men's clothing, makes $5 an hour. His retirement is gone. His health benefits are gone. His family is in trouble. Why? Because he did what the law told him he could do. He withheld his labor. He went outside the airport and held a sign that said, "This employer is unfair. We can't bargain with him." He exercised his rights, and he was fired.

If the bill we have today passes the House, passes the Senate, and is signed by the President, no longer will Americans be fired for expressing themselves.

Mr. MINETA. Mr. Chairman, H.R. 5, the Workplace Fairness Act, is essential legislation which I am proud to support.

This legislation will restore the balance between labor and management which has been eroded over the last decade.

Since 1935, the National Labor Relations Act has protected the right of workers to engage in collective bargaining, including the right of workers to strike.

H.R. 5 will end the anomaly in current law which permits employers to permanently replace striking workers despite the fact that employers are prohibited from firing workers for taking part in legal strikes.

There is no difference to the worker in being fired or being permanently replaced. In either situation, it means no job, no paycheck, no benefits, no health care coverage. Meanwhile, the cost of food, of housing, of car payments, or tuition, and of medical bills continues.

On the other hand, businesses have a number of options to continue operations during a strike.

They can replace all of the strikers for the duration of the strike.

Or, they can operate with supervisors and nonunion workers.

Or, they can stockpile in anticipation of a strike.

Or, they can shift work to nonunion facilities.

Or, they can subcontract for the duration of the strike.

H.R. 5 will level the playing field, restore a fair balance between labor and management, improve the standard of living for American workers, increase the competitiveness of American industry, and insure that the interests of all American workers are protected.

Mr. MOODY. Mr. Chairman. I am no expert in labor relations or labor law. We have heard greater experts than I on the floor today explaining to the membership how important this legislation is to America's working men and women.

But I do know what fairness means. And the claims by opponents of the striker replacement bill that this legislation will unbalance the scales between management and labor is itself an unfair charge. In fact, the opposite is true.

Without this law, the scales would be completely unbalanced against labor—against workers' rights and ability to withhold their labor in a dispute. What balance is there when going on strike means you can be permanently replaced—that is, fired? How can you strike when your livelihood is permanently threatened?

What balance is there when Greyhound or TWA—or International Paper or Cudahy in my State of Wisconsin—all replace striking workers permanently?

The fact is that the traditional labor-management balance that has prevailed for the last 50 years has been drastically altered over the last 10 years by a Reagan administration that used then considerable means at its disposal to achieve a far reaching antilabor agenda. There are many examples. Enforcement of OSHA laws was essentially gutted by first reducing, then eliminating altogether, onsite inspections. OSHA fines for serious violations were resulting in death or critical injury were reduced by more than 50 percent from 1972 to 1990.

But even more seriously, President Reagan used his discretion to undercut the traditionally neutral, mediating role of the National Labor Relations Board [NLRB] by appointing members who were openly antagonistic to organized labor. This resulted in a sharp rise of findings in favor of management and against labor—even when compared to previous Republican administrations. To say that the NLRB was packed by antilabor ideologies is no exaggeration.

And that is why we need this bill. The TWA, Greyhound, and International Paper situations would never have arisen under a balanced NLRB.

As long as we have aggressively antiunion political leadership, there will be strong support for legislation like H.R. 5. We would not be here discussing this legislation if the executive branch hadn't sought every means available to circumvent and gut the intention of America's time-honored and time-tested labor legislation philosophy of a rough balance between labor and management on the NLRB.

We need a strong bill because we need to send a strong message—working men and women will not be the doormats for those ruthless employers, and their administration servants, who seek to drastically imbalance the scales of fairness.

Mr. STENHOLM. Mr. Chairman, Members on both sides of this issue who have spoken before me have focused on the effect that H.R. 5 would have on the two sides involved in a labor dispute, that is employers and unions. I would like to add a slightly different perspective and share with you some of the unintended consequences this legislation would have especially in one area of great concern to me—rural health care.

I think most of us can agree that the availability and cost of health care is one of the

most important problems facing our country today. The problem is particularly acute in rural areas, with hospitals struggling to stay open and recruit the highly trained personnel necessary to keep the hospitals functioning. Of course, the real question here is not even the survival of hospitals; it is the health and lives of human beings. When the question becomes whether or not my senior citizens can receive health care, young women in my district can deliver their babies, or farmers have somewhere to go in the case of a farm accident, you can bet the issue has grabbed my attention and I'm not going to close my eyes to unintended consequences.

There is no question that H.R. 5 will cause more strikes. Coming on top of a recent Supreme Court decision which will facilitate the organization of acute care hospital employees, this legislation could result in traumatic disruptions of health care services, reduced access to services, and increased costs to consumers and the Government.

A hospital—especially one that is the sole provider of health care services within a several hundred mile area—does not have the luxury of closing its doors for any amount of time. The cost in terms of human life makes intentional shutdown of a hospital not only unacceptable but unethical shutdown of a hospital not only unacceptable but unethical as well. Likewise, rural hospitals do not have the option of hiring qualified temporary replacements. We start with a severe shortage of health care professionals in rural areas, a problem that we are spending Federal dollars to address through the National Health Services Corps and other incentives to health personnel. A hospital certainly won't be able to hire replacement workers with the supply being grossly inadequate to begin with. It is even more ludicrous to assume individuals could be convinced to travel hundreds of miles to a rural community to work as a temporary replacement. And even if one accepted that unrealistic premise, most hospitals would be unable to bear the cost of hiring short-term replacement workers. According to Betty Files, vice president of Hendrick Medical Center in Abilene, TX, the average cost of locating, recruiting, and training replacement nurses averages $15,512.

Without the option of closing its doors or hiring temporary replacements, a hospital would be faced with two equally undesirable options: It could either accede to labor's demands or it could attempt to maintain operations with nonstriking personnel.

Attempting to maintain operation without replacing striking personnel obviously would be extremely dangerous. Linda St. Mary LaFlamme, a registered nurse working in St. Louis, described this danger at a recent briefing:

> Ongoing labor stife in a hospital will strain the nursing staff to the breaking point, because the nurses will have to cover the basic services normally delivered by the striking employees * * * The other nurses and I would be forced to work double shifts * * * Working double shifts for an extended period of time will physically exhaust the nursing staff and affect the ability of nurses to make the care decisions necessary to the well being of our patients.

Mr. Chairman, I think we all know how our constituents feel about the rising cost of health care. The cost of health care will only increase even more rapidly as hopitals that are forced to accede to labor's demands pass the costs along to the consumers. Costs will also be passed to the Federal Government through the area wage index component of Medicare reimbursement to hospitals. Thinking that either consumers or the Federal Government can escape the costs of H.R. 5 is just plain foolish.

Mr. Chairman, this issue is not a simple issue involving only two sides. It is not just a fight between labor and management. This bill will have ramifications for the American people who may never see the picket line. Patients at a hospitals, residents of nursing homes, farmers waiting for their goods to be delivered to market and their customers waiting to buy these products, homeowners dependent on truck drivers to bring them home heating oil—all of these groups will be severely affected if we vote to impair the ability of industries to continue delivering their vital services during a strike. I urge my colleagues not to forget about these working men and women when they cast their vote on H.R. 5.

Mr. EDWARD of California. Mr. Chairman, the legislation we will vote on today will not grant any additional rights to union workers. It will only ensure that one of the most important labor rights, the right to strike, is preserved. That is why I rise today in strong support of H.R. 5.

Over the past 10 years, we have seen a dramatic shift in the balance of power between labor and management. Since President Reagan's decision to fire the air traffic controllers in 1981, it has become acceptable for management to permanently replace striking workers. This has had a destructive effect on the collective-bargaining process as employers have been reluctant to negotiate in good faith when they know they can simply hire new workers if they can force a strike.

H.R. 5 would give meaning to the right to strike guaranteed by the Federal Government. Although the law says that a worker cannot be fired for going on strike, the law also says that an employer is free to hire new permanent employees. H.R. 5 would get rid of this contradiction by clearly stating that employers do not have the option of hiring new employees in the event of a strike.

Finally, it is said that H.R. 5 is anticompetitive, yet the opposite appears to be true. According to the Library of Congress, among the industrialized nations, only Great Britain and certain Canadian provinces allow the hiring of permanent replacement workers. If Japan and Germany can compete in the global marketplace using replacement worker prohibitions, then I believe the United States can also compete with a similar law in place. I urge my colleagues to join me in supporting H.R. 5.

Mr. DICKS. Mr. Speaker, I rise in strong support of H.R. 5.

As a cosponsor of this legislation, I believe the right to strike is critical to the foundation of labor-management relations. This right has been guaranteed to American workers for more than 50 years, yet today it is seriously challenged by management's decision to hire permanent replacement workers.

I recognize that the Mackay decision provided employers the right to carry on the business. But as a matter of practice, however, management rarely exercised the option of hiring permanent replacements because it was considered to be unfair. Unfortunately, since the precedent of the air traffic controllers' strike of 1981, management has increasingly used its ability to replace striking workers, rendering this action by workers meaningless. Permanently replacing workers is not a legitimate practice in today's society. It destroys the cornerstone of collective bargaining. If management can permanently replace striking workers, the employers incentive to negotiate and bargain is reduced considerably.

Mr. Chairman, today we have an opportunity to restore balance, to bring fairness back into labor-management relations. I urge my colleagues to seize this opportunity and support this important legislation.

Mr. BUSTAMANTE. Mr. Chairman, I've come to believe that unions exist because either bad management exists at a worksite or a company has had a history of bad management. Groups of employees choose union representation in order to produce a democratic environment in the workplace through the collective-bargaining process.

Until the eighties, labor-management relationships have been relatively peaceful and stable as compared to the years when we were without a national labor law when workers had no rights. For the first 35 years of this century, workers had no say or influence in determining their wages or working conditions. They were treated as a simple commodity—a unit cost of production.

The Wagner Act changed that. But since the decade of the eighties, we are returning to the old days with the advent of a new kind of management class—the corporate raider. Unlike their counterparts of the past, they are interested in taking over and breaking up companies not building them. But like their predecessors, they are interested in breaking labor contracts, not building sound labor-management partnerships.

In 1935, Congress passed the Wagner Act to give workers a leg to stand on in dealing with management over issues of wages and working conditions. Under the National Labor Relations Act the strike is recognized as a tool to compel both labor and management to negotiate their differences seriously and fairly.

Corporate management has now found a way to undermine the collective-bargaining process and to shirk its responsibility to bargain in good faith. Management now engages in the practice of firing legal strikers by giving their jobs to permanent replacement workers. Three hundred thousand workers have been fired for exercising their legally protected right to strike since the early 1980's. The practice of hiring permanent replacement workers has destroyed a balanced labor management framework.

It's now time to restore balance to that system of checks and balances which presently governs labor-management relationships. I urge my colleagues to support this effort to achieve worker fairness. Please support H.R. 5.

Mr. MARKEY. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act,

directed by my most able and distinguished colleague from Missouri, Representative BILL CLAY, and the amending language by my friend from Florida, Congressman PETE PETERSON. The National Labor Relations Act [NLRA] has given workers the right to organize labor unions, to bargain collectively with employers, and the right to strike for better wages, benefits, and working conditions for over 40 years.

A key safeguard the NLRA has to offer is the prohibition against firing workers for exercising their right to form or join unions. However, during a strike this safeguard loses its impact if it is legal to replace an employee who supported union activity during a strike. Increasingly during the last decade, since Reagan and PATCO, workers exercising their right to strike during a labor dispute have had this fundamental right undermined by employers who hired permanent replacement workers for the striking workers' positions.

H.R. 5 would amend the National Labor Relations Act to prohibit employers from hiring permanent replacement workers during a labor dispute and prohibit employers from discriminating against striking workers returning to their jobs once the dispute is over. I am an original cosponsor and solid supporter of this important legislation because the right of workers to strike is critical to the success of the collective-bargaining process, and that right must be well protected. The permanent replacement of striking workers represents a misinterpretation of the original intention of the NLRA, and it jeopardizes the rights of America's working men and women.

Opponents of this bill would have the American public believe that workers still have the viable option to strike. However, for the striking man or woman what is the difference between being fired and being replaced permanently? How seriously will workers' demands be taken by management when their final desperate attempt at having their concerns addressed is virtually powerless in the face of the permanent replacement threat?

Opponents of this legislation would also have the American public believe that permanent replacement has not been a major factor in labor-management relations during the last decade. However, over one-third of striking workers have been threatened with permanent replacement. This practice of intimidation leaves the worker with two options: lost your job or succumb to management's demands. These tactics have resulted in a decline in the real wages of the American worker during the last decade. An actual decline in real earnings during the Donald Trump, boom economy, high living, greed-driven eighties.

The real issue we are debating over today is whether we agree on the sanctity of the American workers' fundamental right to strike without fear of losing his or her job. The dignity of the working men and women in this country has been abused long enough by the use of the permanent replacement practice. It is time to rejoin the rest of the industrialized world in respecting the people who form the invaluable foundation of our country's economy. I ask my colleagues to support the Workplace Fairness Act to restore the equity in labor-management relations that the NLRA originally intended and to restore the honor in being an American worker.

Mr. GLICKMAN. Mr. Chairman, I rise today in support of H.R. 5, the Fairness in the Workplace Act of 1991. I do so after carefully considering the merits of the arguments both in favor of and opposed to this measure.

H.R. 5 will eliminate the apparent conflict between the National Labor Relations Act of 1935, which provides workers the right to strike without being fired, and the Mackay Supreme Court decision which allows companies to permanently replace strikers. Federal law prohibits employers from firing strikers, but it allows the employer to permanently replace the striker. My support of this bill stems from the need to clarify this contradiction.

I am very concerned about the loss of jobs caused by the practice of permanently replacing strikers. Collective bargaining will never be effective if there is an apparent imbalance in the negotiating process. Workers must be assured that they will have safe work conditions and fair compensation for their work contribution, and that if they do not have such conditions they can fairly bargain with their employers. They must be further assured that if the bargaining process fails, they can strike without the fear of being permanently replaced.

The decision to strike has always been a difficult and costly one for workers. It means being without a paycheck. It means a disruption of daily life for workers and their families. It is sometimes, however, the only way workers are able to protect their interests in contract negotiations with their employers. I urge my colleagues to remember this and realize workers strike only as a last resort. Keeping this in mind, I further urge passage of this legislation to maintain the balance of bargaining power between workers and their employers.

I would point out that this bill does not apply to nonunion employment relationships, which represent the vast and overwhelming majority of American employees. I would not have supported legislation which would have covered nonunion workplaces.

Mr. MICHEL. Mr. Chairman, I must oppose H.R. 5, the striker replacement bill. The bill would overturn 50 years of established law and unnecessarily change the delicate balance in labor-management relations.

The law, as it currently stands, prohibits employers from hiring permanent replacements for strikers if the company has engaged in an unfair labor practice.

But if workers strike for purely economic reasons, for higher wages or benefits, the law permits employers to remain in business by allowing the hiring of permanent replacements.

This, however, is a practice that most employers do not enter into lightly.

A delicate balance is struck between the employees' right to strike for increased wages and the employers' right to stay in business, to retain market share and to protect the jobs of those employees who have chosen not to strike.

H.R. 5 tips this delicate balance significantly toward workers who go on strike because it would force employers to accept the economic demands of striking workers or risk going out of business.

Arguments for H.R. 5 suggest that there has been a significant increase in the hiring of permanent replacements during the last 10 years. I grant that there have been several high-profile strikes in recent years involving permanent replacements.

But these isolated cases should not trigger a major revision of law which has served both labor and management well for over 50 years.

In fact, when examining the hard evidence the alleged trend does not materialize. An Employment Policy Foundation study identified 251 National Labor Relations Board cases since 1938 where permanent replacements were hired, with only 22 of those cases occurring since 1981. A GAO study found that only 4 percent of striking workers were permanently replaced in 1989.

I also note that over the years labor law has been reviewed and amended on several occasions. At no time has the issue of banning permanent replacements been seriously considered.

During a major overhaul of labor law in the Carter administration, the concept of banning permanent replacements was found unacceptable. It was felt that banning permanent replacements would lead to increased labor disputes and inflationary wage increases.

Enactment of H.R. 5 will lead to increased strikes. Rather than encouraging strikes, we should be encouraging labor and management to work together to improve the global competitiveness of U.S. companies. Increased competitiveness will lead to larger market share and more jobs for Americans.

In closing, I would like to remind Members that the President has indicted that he will veto H.R. 5.

I urge my colleagues to leave in place the existing balance which entails risks for all parties at the bargaining table. Let's not provide an unfair advantage to only one side.

Mr. STOKES. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act, and urge all my colleagues to support this legislation to restore a fair balance between the interests of labor and management, as orginally envisioned under the National Labor Relations Act.

I also want to take a moment to commend my colleague, the gentleman from Missouri [Mr. CLAY], who has worked tirelessly to bring this important legislation to the floor. As a result of his leadership we have before us a bill that protects the rights of American workers.

Mr. Chairman, there is a serious threat to the livelihood of working men and women of America—the permanent replacement of striking workers. This practice is both bad economic policy and morally reprehensible.

The right to strike is the only legal means workers have of bringing economic pressure to bear on employers to protrect their wages and working conditions. The National Labor Relations Act says, "Nothing in this act * * * shall be construed so as either to interfere with or impede or diminish in any way the right to strike * * *." Permanent replacement of striking workers eliminates the right to strike.

Though the right to permanently replace strikers has existed for more than 50 years, employers seldom resorted to it until recently. What is ultimately at stake is the survival of the collective-bargaining system. Without an effective right to strike, workers enter negotiations with no leverage.

Our labor law gives workers the right to choose whether to be in a union; but by permanently replacing the workers, the employer also permanently replaces the union. Increasingly, we see instances in which employers are promoting strikes, making bargaining demands that are so outrageous their employees are forced to strike. The employer then permanently replaces the workers and thereby effectively busts the union.

Mr. Chairman, in order to restore American manufacturing to global competitiveness, good will between labor and management needs to be nurtured. Instead, we have a law which deceives workers, and undermines the trust that is essential in building cooperative working relationships between labor and management.

The Workplace Fairness Act prohibits employers from hiring permanent replacement workers during a labor dispute. H.R. 5 also makes it an unfair labor practice for employers to grant employment preference to replacement workers over striking workers once a dispute is settled.

I am proud to be among the over 200 Members of Congress who have joined as cosponsors of H.R. 5. I believe that a practice which encourages employers to bargain in bad faith, that prolongs labor disputes, that destroys workers' rights to a voice in their working conditions, that destroys individuals, families and communities, should not and cannot be tolerated.

Mr. Chairman, the Workplace Fairness Act is an intelligent legislative solution to a very emotional and contentious issue in labor-management relations in this country. I urge all my colleagues to support this fair and reasonable legislation to restore fairness to labor-management relations.

Mr. ROE. Mr. Chairman, I strongly support and was one of the first to cosponsor H.R. 5, the striker replacement bill. The bill is designed to protect an important right which has been guaranteed to American workers for more than 50 years: The right to strike when they are unable to reach a collective bargaining agreement with an employer.

The right to strike is a fundamental right of American workers. It is part of a comprehensive system of workers' rights and protections that has proved successful during the past half century in making American workers the mainstays of our economy. To permit permanent replacements for strikers is to do away with the right to strike altogether. That right is fundamental to American society in the 20th century and must be maintained.

In recent years, the right to strike has clearly been jeopardized by several antiunion actions. Although the law is clear that employers may not fire striking employees, the courts have illogically ruled that the employer may permanently replace strikers. This right of employers was rarely exercised until the 1980's when replacing striking workers began to gain favor with some employers. In the airline industry, permanent replacement workers have been hired in five of seven airline strikes since 1981. More than 16,000 workers have lost their jobs in these strikes.

This is a dangerous precedent for American business. By ignoring the need for a qualified and experienced work force, by looking at the short term rather than an enduring and cooperative relationship between labor and management, some businessmen have undercut the quality and competitiveness of their own enterprises. American business rose to preeminence on a foundation of a working relationship between management and labor. By allowing one facet of this tandem to simply divorce itself from the other, without consideration, is to destroy this foundation and return to the days of sweat shops when workers were simply dependents of management rather than contributing partners.

Business is a partnership. Labor is not a simple chattel to be bought and sold at the best price. Workers are the lifeblood of productivity and to strip them of their right to stand up for themselves and their families strips them of their dignity and robs business of workers who care about their jobs and the quality of their work. A job is more than a simple paycheck, it reflects an individual's self image. To say that they simply serve at the whim of management is to remove from them any form of control over their own livelihood. This grossly unequal situation is far from the American ideal of justice and equality. It is a step backward and will further undermine the nation's struggle to remain competitive in the world market.

Industrialized nations throughout the world have recognized that labor and management are both integral to the success of business. Without a substantive right to strike, labor is left exposed, unable to bargain for its needs and unable to stand with management as an equal in performing the business of the country. Without a right to strike, labor becomes one more inanimate production component bought and sold like so much coal or steel or concrete.

H.R. 5 reverses this serious erosion of labor rights, prohibiting the permanent replacement of striking union employees. Two hundred and ten of my colleagues and I have cosponsored this vital legislation to reserve and protect the rights of working men and women in this Nation. I urge my colleagues to join me in passing this important legislation.

Mr. GREEN of New York. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act of 1991. The legislation, which will amend the National Labor Relations Act and the Railway Labor Act, prohibits employers from giving replacement workers seniority over workers who strike for economic reasons. Recent examples in which management sought to do that include the Eastern Airlines, Greyhound, and Daily News strikes.

It is clear that, over the past 10 years, the collective-bargaining environment has changed. Labor-management relations have changed. H.R. 5 works to address the imbalance that has emerged and restores the legitimate right of an employee to strike without the threat of being permanently replaced. The legislation preserves the right of management to operate during strikes by allowing the hiring of temporary replacements.

In closing, I believe that losing one's job should never be a prerequisite for seeking economic equity. The Workplace Fairness Act will work to remedy the current inequity in our labor law as well as advance more cooperative labor-management relations. H.R. 5 will help restore the significant erosion in bargaining strength that the American worker has had to confront over the past decade.

Mr. CHANDLER. Mr. Chairman, I rise today in opposition to H.R. 5, also known as the striker replacement bill. This fails to achieve its goal of creating equity in the workplace, and instead, seriously undermines the delicate relationship that currently exists between employers and their employees. Over the past 50 years, we have created fair and equitable labor-management laws which have been used as standards for worker protection laws worldwide. Because we have these laws in place, American industries have maintained a competitive edge in the world marketplace.

Current law has guidelines in place that limit the ability of employers to use permanent replacements during a strike. The truth is that no striker can be fired for lawfully exercising his or her right to strike. The truth is that permanent replacements cannot be hired during an unfair labor practice strike—and this definition includes unreasonable settlement packages presented by an employer to a union. And the truth is that in contrast to claims that the incidence of permanent replacements has risen in the past decade, the General Accounting Office study has shown that employers have only hired permanent replacements during economic strikes in 17 percent of recent cases.

Proponents of H.R. 5 will argue that this bill is needed to bring back balance under the current labor-management collective bargaining process. I disagree. Proponents would have you believe that employers currently have no incentive to bargain with striking workers, so long as they have the right to replace them. This is simply not the case.

Mr. Chairman, I fear that H.R. 5 unfairly tips the scales and destroys the economic balance in private sector collective bargaining established over 50 years ago. Ultimately, this legislation will greatly diminish the ability of American business to compete both here and abroad. I firmly believe that Congress should instead be seeking ways to enhance the ability of American companies to compete in an increasingly global marketplace. This would do far more to benefit the American work force than this bill will ever hope to achieve.

Mr. GUNDERSON. Mr. Chairman, in voting on H.R. 5 today, the House has again failed in its responsibility to find fair solutions to the difficult problems facing American employees and employers.

A PROBLEM EXISTS

I will be the first to agree that the balance in labor-management relations has shifted in favor of management. While the Mackay Supreme Court decision, which H.R. 5 would overturn, has been in place since 1939, few employers have opted to permanently replace workers who strike for economic reasons. A GAO report requested by the proponents of H.R. 5 states there is little supporting data of more replacements hired since 1980. In fact, the Mackay doctrine has been used in court for just 4 to 6 cases per year on average over the last 40 years.

However, the problem is a few bad apples have spoiled this tradition. Some high profile labor-management disputes, like those at Eastern Airlines and Greyhound, for example, have made it obvious that some unscrupulous

employers are not reluctant to permanently replace strikers to avoid bargaining in good faith with them.

I agree with labor that a problem exists, and that a solution is needed. However, H.R. 5 is not the solution. If the National Labor Relations Act [NLRA] is now tilted to favor employers, it will be tilted to favor employees under H.R. 5.

H.R. 5 IS NOT THE SOLUTION

H.R. 5 is unfair because it eliminates any defense an employer has against a total shutdown of his or her business. While section 13 of the NLRA guarantees that nothing should "interfere with or impede or diminish the right to strike," section 9(c)(3) of the NLRA refers to strikers "not entitled to reinstatement."

The law never intended to allow employees to shut down a business for any reason without incurring some minimal risk. In fact, the Supreme Court stated, "The right to bargain collectively does not entail any 'right' to insist on one's position free from economic disadvantage. The right to strike as commonly understood is the right to cease work—nothing more."—Warren Court, 1965, American Shipbuilding Co. versus NLRB.

Proponents of H.R. 5 know this. In 1977, when President Jimmy Carter proposed his labor relations reform bill, he specifically opposed banning permanent replacement workers. At the time, he thought such a ban would be unfair to employers and disruptive to the collective bargaining process. In the last Congress, proponents of H.R. 5 introduced H.R. 4552. That bill simply set a 10-week moratorium on hiring permanent strike replacements.

H.R. 5 IS PURE POLITICS, NOT GOOD POLICY

Why now do they seek to go further with H.R. 5? Unfortunately, I feel they have done so for political reasons—to force a Presidential veto. Evidence of this was clear when, during hearings on this issue before the Labor-Management Subcommittee on July 14, 1988, Chairman CLAY stated that the bill "may not become the law of the land, but it's going to become the battleground for the next session of Congress, I can assure you of that."

This hardball approach is too common. And it nearly always hurts America's workers. Many of the proponents advocating workplace fairness under H.R. 5 are the same proponents who demanded fairness during the divisive budget battle last year. They forced luxury taxes on the purchase of such items as automobiles, aircraft, and boats—all in the name of fairness.

Since that time, these taxes have cost American workers their jobs. Auto industry sales have dropped 45 percent since the fairness taxes were put in place. So far, over 3,000 auto sales workers have been laid off. The boating industry has laid off over 8,000 boat builders, and projects a total of 19,000 workers will be laid off by year's end.

My fear is that H.R. 5 follows this same logic of fairness. The bill undermines the intent of the NLRA, which is to reduce labor-management tension and reduce strikes. Today, strikes are at the lowest level since 1935. H.R. 5 makes striking as an alternative to productive bargaining too simple. No one gains when America's workers can't work.

A BETTER SOLUTION

While I oppose H.R. 5, I support the only available solution that represents a middle ground on this issue. The substitute offered by Mr. GOODLING acknowledges the pendulum has shifted to employers under NLRA, but looks for a solution that can become law.

First, the substitute prevents permanent replacements for the first 8 weeks of a strike, similar to the original H.R. 4552. The committee found the huge majority of strikes are resolved within 8 weeks.

Second, the substitute extends from 12 to 18 months the period of time strikers not reinstated have to vote in a representation election. This provision greatly decreases the opportunity for employers to decertify a union after conclusion of an economic strike. Specifically, it allows a union to seek to maintain its representation of replacement employers with votes of replaced strikers.

Third, the substitute includes a sense-of-Congress resolution stating that the National Labor Relations Board [NLRB] should resolve the problem of delays in intervening in such disputes. According to a recent GAO report, though fewer than 5 percent of cases filed go to Board, and just 17 percent of those are typically delayed 2 years or more, this amounts to 823 cases per year. The substitute bill would require the NLRB to give precedence to cases requiring determination of strike status.

Fourth, the substitute also contains provisions requiring secret ballot votes to strike, and codifies case law allowing employers not to reinstate violent strikers.

The Goodling substitute is balanced and fair, without the faults inherent in H.R. 5. Importantly, it is also well-intentioned, seeking not to give unfair advantage to one side over the other, but to maintain balance in labor-management relations.

A COMPREHENSIVE APPROACH TO LABOR LAW REFORM

Finally, I ask my colleagues to review my call for establishment of a bipartisan commission on labor law reform. In an increasingly competitive world economy, America cannot afford increased tensions in labor-management relations. Neither can American workers and American businesses afford continued partisan, piecemeal approaches to improving working conditions for American workers.

A major focus of the commission must be on redirecting the National Labor Relations Act. The NLRA should do more than simply mediate disputes. It should also provide guidance in promoting joint labor-management goals.

Again, I pledge to the Wisconsin laborers and business owners I represent that, despite failure by Congress to work these problems out, I will continue pushing for comprehensive reform of our labor laws. I plan to continue providing fair, middle-ground alternatives to the divisive policies advocated by some in Congress.

Mr. BORSKI. Mr. Chairman, I rise in strong support of H.R. 5 to provide essential protection to American working men and women.

There has been a lot of rhetoric injected into this debate but one fact is clear: Without this legislation, the right to strike is virtually meaningless.

The National Labor Relations Act was written in 1935 to protect the rights of workers to join unions and engage in collective bargaining. In general, this law has successfully protected working men and women. But it fails miserably when employees go out on strike. A strike is the one circumstance in which an employer can legally replace a worker who is engaging in a union activity.

In fact, ever since Ronald Reagan fired 11,400 striking air traffic controllers in 1981, employers have increasingly used this legal loophole to crush strikes.

Mr. Chairman, nothing is more fundamental to the collective-bargaining process than the right to strike. But confidence in that right is rapidly eroding. That is because thousands of workers have lost their jobs to permanent replacements when they exercised their right to strike.

Obviously, we need to restore workers confidence in this essential element of the collective-bargaining system. And, we have an opportunity to do that today by approving H.R. 5.

H.R. 5 would ban the hiring of permanent replacement workers during labor disputes. As such, the legislation would restore a measure of equity to labor-management relations. Employers would still be allowed to hire replacements during a lockout or strike, but striking workers would be entitled to their jobs at the end of the dispute.

Mr. Chairman, I believe this legislation is a matter of basic fairness and equity. The working men and women of this country deserve no less.

Mr. SKAGGS. Mr. Chairman, legislation that deals with the fundamental relationship between labor and management in this country is always sensitive business. So, the Workplace Fairness Act, H.R. 5, deserves careful review, and the questions that have been raised—principally by businesses and business groups—deserve decent answers.

In deciding to support H.R. 5, I have tried to proceed in that way. I start from the proposition that we have a clear national interest in preserving and encouraging a fair and balanced collective-bargaining environment, which can serve to resolve disputes and effectuate workplace changes in a peaceful and stable fashion.

The ultimate sanctions historically recognized in American labor law and practice have been the lockout—by management—and the strike—by labor. Neither sanction could be easily circumvented by the other side in a dispute. Each reflected a proper sense that no person should be forced to apply either their capital—plant and equipment—or their labor involuntarily.

For workers, the right to strike—to withhold one's labor—is essential to the fundamental balance, and therefore to the fundamental fairness of collective bargaining. No one makes the decision to strike easily—it's far too costly for everyone affected to be casual about it. But, without it, the ability to bargain effectively is greatly undermined.

Employers who wished to continue operations during a strike were able to do so with temporary replacements, an approach that has been recognized as legal notwithstanding its obvious impact on the viability of a strike. But what's happened in the last few years has been the growing practice of companies faced with strike simply to hire permanent replace-

ments for strikers. For all practical purposes, that means you get fired for exercising your legal right to strike.

The net effect of allowing permanent replacements is to vitiate the ultimate bargaining position of workers and to render entirely unstable the collective bargaining process on which we properly reply for the orderly resolution of labor disputes. When the process gets so dramatically skewed in one direction, when people feel that the legal system no longer fairly requires comparable responsibilities and secures comparable rights for both sides, you end up with bitterness, community division and disillusionment, at best, and with resort to unlawful tactics, at worst. How much better to restore the proper balance than to merely condemn the wrongs wrought by imbalance. That's what H.R. 5 seeks to do.

Although the legal power to hire permanent replacements has existed since the late 1930's, companies simply didn't do it—at least not until recently. The President had a clear, if different, legal right to fire the PATCO strikers in 1981, because as Federal workers they had no legal right to strike. Still, that event appears to have legitimized in the minds of our less principled corporations a practice that had generally been viewed as illegitimate before. So, the 1980's and the abuses of Frank Lorenzo and others.

Several objections have been raised about the effect H.R. 5 will have in actual practice. And I want to try to address those questions. First, it was suggested by some that H.R. 5 would give protection to unauthorized walkouts and wildcat strikes. Clearly, by its terms, H.R. 5 applies only to those involved in labor disputes resulting from collective action under the auspices of a collective-bargaining representative. The use of that terminology, and the reliance on the well-established definitions of the National Labor Relations Act, precludes application in the case of illegal strikes.

Second, the issue of application to nonunion firms has been raised. The bill was amended in committee and now, again, on the floor to remove any practical doubt on this point. The protections afforded by H.R. 5 are to be available only to already unionized firms. There is even a lengthy legal opinion to this effect from the American Law Division of the Library of Congress. This bill was never intended to be a means to give labor a new weapon to use in organizing efforts. It's been made clear that it can't be.

So, the passage of H.R. 5, rather than leading to the excessive results feared by some of its opponents, will have the simpler effect of returning labor-management relationships to the state we generally knew throughout most of this century. Neither labor nor management will have excessive power, and both will have incentives to work together to reach agreement. Decisions on who will represent workers, and how disputes between employers and workers will be negotiated and settled, will follow well-established rules.

As part of this, the option of a strike will be available to a union, as the last resort that it always has been and always should be, and the option of hiring temporary replacement workers will be available to management, as it has been and should be. But a strike, while a drastic step, will not represent the end of the management-worker relationship, but instead a temporary impasse that can be resolved to everybody's satisfaction. And that, too, is as it should be.

Mr. ANNUNZIO. Mr. Chairman, I rise in support of H.R. 5, a bill ithat would bar the use of permanent replacement workers who take the jobs of striking employees who walk out over pay and other economic disputes.

Mr. Chairman, it's sad to think that we might not be considering this bill if President Reagan hadn't broken nearly 50 years of precedent by firing 12,000 striking air traffic controllers in 1981. Unfortunately, he did, and ever since then many American business owners have followed his lead. Scab laborers are now commonly used to intimidate American workingmen and women who are fighting for health care and livable wages to support their families.

By outlawing scabs, H.R. 5 will restore collective bargaining as the proper vehicle for settling labor disputes fairly. Mr. Chairman, despite the howls of protest that some business leaders have voiced against H.R. 5, I believe it will restore stability to the American workplace. Without H.R. 5, we will continue to see more of the disruptions that have ravaged companies such as Greyhound, Eastern Airlines and the New York Daily News.

But by passing H.R. 5, we will join industrialized countries such as Germany, Japan, France, Italy, Canada, and Sweden that forbid scab labor. The laws that now protect workers in those countries haven't hurt their competitiveness. We should expect the same results. In essence, this bill gives us a chance to help workers as well as our economy. I urge my colleagues to support H.R. 5.

Mr. McMILLEN of Maryland. Mr. Chairman, I rise today in support of the Peterson amendment to H.R. 5. In particular, I want to express my unequivocal support for the working men and women who will regain equality in our labor relations laws. I also am impressed by the efforts of Chairman FORD and Representative PETERSON in reaching a compromise to allay the fears of many individuals in this country about the effect of this legislation on non-union companies.

By reinforcing the language in this bill which restricts application of the law to bargaining unit work, work done by unionized employees, the legislation is more clearly defined. The Workplace Fairness Act will provide the balance in labor-management relations which has been missing for the past decade, and will ensure that working men and women may have the opportunity to work with management for the good of their companies.

At the same time, Mr. Chairman, employers in non-union companies will continue to have the freedom to write contracts with their employees without being bound by labor laws that should not apply to them. That is the crux of the Peterson amendment, and the reason why this amendment will provide stability to both collective bargaining situations and labor-management relations in non-union firms.

Mr. HEFLEY. Mr. Chairman, today Congress is faced with a choice. The choice is whether to support economic growth and vitality or to support big labor's latest plan to fill the union coffers. To me, the choice is clear.

Congress should not sanction big labor's attempt to disrupt 50 years of labor law. By passing H.R. 5, Congress would send a message to the American people. That message, however, is not that we support working men and women as some would have you believe, the message would be that we in Congress support big labor bosses.

It's now clear that the Democrats are going to use their old standby issue of class warfare, trying to pit labor against management in an attempt to show that they are the party of the working class. But Mr. Chairman, is telling a business that they must shut their doors and close up shop because their is an economic strike against them something that will benefit the working class? Is losing your job because your company couldn't survive the economic strike against it, something that benefits the middle-class worker? As always, when the Democrats open their mouths, hold onto your wallet America you're about to be robbed, because strikes are costly and businesses will pass that expense on to the consumer.

Mr. Chairman, currently, the union's potent right to strike is counterbalanced by management's equally lawful right to continue its operations with replacement employees. This balance provides the strongest possible inducement for both groups to negotiate their differences. By passing H.R. 5, and insulating employees from the traditional risks that have checked precipitous strikes, we would promote labor unrest which would hurt labor, management, customers, suppliers and consumers.

Mr. Chairman, I urge my colleagues not to saddle our economy with the excess burden of federally mandated job security and vote against H.R. 5. And against the substitutes before you.

Mr. FRANKS of Connecticut. Mr. Chairman, today we have legislation before us which has the potential to radically alter the delicate balance between business and labor that has existed for more than fifty years.

The National Labor Relations Act [NLRA] was set up to provide for an equal balance of power in the collective bargaining process. As the Act states, it was Congress' means of "restoring equality of bargaining power between employers and employees".

During a strike over unfair labor practices businesses are allowed to hire temporary workers to fill the slots of strking workers. Once the strike has ended, these striking employees are required to be reinstated with full back pay.

During a strike over wages and benefits, an economic strike, the employer retains the right to keep the business up and running by hiring permanent replacements. There are, however, strict limits on doing so. Whether replaced or not, economic strikers still officially retain employee status.

Only three years after the NLRA was enacted, the Supreme Court confirmed that the employer had the right to hire permanent replacement in order to keep the business operating. Since then the Court has reaffirmed in numerous cases this same employer right.

Basically, what we have here is a level playing field for labor and management. Both can reap economic reward or loss. Labor risks being permanently replaced and business risks to possibility of not being able to operate during a strike. Mr. Chairman, these are the equal and fair risks that have served working men and women well for half a century.

This balance has resulted in guaranteeing the hard fought rights of workers, but not at the devastating expense of business owners, large and small. The reason is both sides have effective means to bargain. Labor can impede a business' productivity and business can replace striking workers to keep the business up and running.

I have had ten years of experience as a labor relations manager in several different companies. I am a true believer in the collective bargaining process and know that it works. Mr. Chairman, contrary to popular belief, most companies look at permanent replacement as a last resort.

It is not in a company's best interest to permanently replace strikers because it is simply bad business to do so. It costs businesses time, money, and resources to train these new employees, for, in many case, highly skilled positions. It also results in down time related to productivity, a problem that could have servere consequences to our economy, which includes those workers on the picket line and their families.

It is my feeling, Mr. Chairman, that if H.R. 5 was to be enacted it would have an adverse impact on all businesses and would hurt our economy, especially in my State which continues to suffer.

If businesses, particularly small businesses, were prohibited from replacing striking workers in order to keep themselves afloat—then we will be shutting the gates of opportunity for everyone.

We will be tilting the scales toward economic anarchy. Working people and owners of a small and large businesses will be the losers.

Mr. Chairman, we have laws and courts for workers to seek justice. Yes, there have been problems and some injustices during the last 50 years, but the system works.

Let's not fall prey to special interest thinking and threats. I hope my colleagues will join me and stand up for the working people of this country and vote "no" on H.R. 5.

Mr. POSHARD. Mr. Chairman, as a cosponsor of H.R. 5, the Workplace Fairness Act, I am pleased to rise in support of the working men and women of the United States of America.

In the face of some very difficult circumstances, American workers continue to fight for decent wages, benefits, working conditions, and standard of living. But they are losing the fight. They are losing to unfair competition from abroad, and an attitude of disrespect here at home.

In my district there is a strong union tradition. But more than that, there is a strong working tradition. People in southern Illinois want to work and take their jobs very seriously, the same way they view attempts to take those jobs away.

It bothers me a great deal to hear people say the unions have lost touch with modern times and have outlived their usefulness. Where would American labor law be today without the progress earned inch by inch over the years by unions dedicated to improving the quality of life for their members? We don't see men and women coming home maimed or killed at the same rate we once did, because the workers decided they weren't going to accept those conditions, and management wasn't going to squeeze the extra penny of profit out of their pain and misery.

Today, companies that employ these workers are not the local operations they once were, but huge international conglomerates with little attachment to the people in the shops and factories. In this atmosphere the company does not hesitate to move to replacement workers if the union is not willing to live under a "take it or leave it" edict. That very attitude is what forces us, as the last resort, to move to protect the rights so many have fought for so long to retain.

Support H.R. 5, to move us away from this ruthless situation and toward a more fair and equitable system of labor relations.

Mr. WEISS. Mr. Chairman, I rise in strong support of the Workplace Fairness Act of 1991. We must seize this opportunity to restore workers' rights and fairness and stability in labor-management relations through collective bargaining.

H.R. 5 reasonably would prohibit the use of permanent replacement workers in a labor dispute involving economic issues, and would bar employers from offering preferential benefits to strikebreakers who cross the picket line and return to work. The legislation would end the anomaly in current Federal labor law that the Mackay Radio decision established 50 years ago. The law, on the one hand, prohibits employers from firing workers for taking part in a lawful strike, but on the other hand, permits them to replace striking workers permanently. Whether a striker is discharged or permanently replaced matters not to the worker—both translate into the same loss of job and loss of paycheck.

In the first 40 years after the Mackay decision, employers, while having the right to hire permanent replacement workers, hardly did so. They recognized that productivity depends on an experienced, highly trained, and loyal work force, that striker replacement is an improper employer retaliation, and that a lawful strike is a basic expression of workers' freedom of association.

In the last 10 years, however, employers have begun to use permanent replacements on a wide scale. When President Reagan fired air traffic controllers in 1981, he flashed a green light to the business community: It was now permissible to discharge striking workers. In addition, a new species of corporate manager emerged from corporate mergers and leveraged buyouts. Managers, overloaded with debt and concerned with survival, were willing to sacrifice long-term interests to win a strike.

A GAO study shows that in about 17 percent of the strikes reported to the Federal Mediation and Conciliation Service in 1985 and 1989, employers hired permanent replacement workers, and in about one-third of the strikes, employers threatened to hire permanent replacements. In addition to being used in the air traffic controllers case, striker replacements were used to end the Daily News, Eastern Airlines, Greyhound, and National Football League strikes, among many others.

Our major trading competitors, including Japan and Germany, guarantee their workers the right to their jobs after a strike is over. Unlike U.S. employers who resort to permanently replacing strikers, our competitors recognize the value of an experienced work force. Because they do not use permanent striker replacements, these countries enjoy stable labor-management relations, and thus are competitive in the world—and American—markets. They have high wages and trade surpluses. The United States, on the other hand, suffers from unstable labor-management relations, falling real wages, and a trade deficit.

Eliminating the option of permanently replacing striking workers, therefore, would help the United States achieve a more competitive position in the world economy. As long as permanent replacements are a possibility, some employers will force a strike as a way to get rid of union employees. When employers permanently replace strikers, they transform a limited dispute about wages into a larger and more heated confrontation about a worker's right to strike, right to keep his or her job, and right to union representation.

Permanently replacing strikers hurts all American workers, union and nonunion alike. In the 10 years that American employers have used striker replacements, not coincidentally, real weekly wages have dropped almost 6 percent. As employers more frequently resort to hiring permanent replacements for strikes, they eliminate labor's mechanism for raising real wages. As a result, wages are dragged down for all workers, both union and nonunion.

Critics of H.R. 5 charge that enactment of the bill will increase the willingness of workers to strike. This assertion ignores what a strike means to a worker: Confrontation, uncertainty, loss of income, and personal and family hardship. The decision to strike is not made easily—strikes are painful and are used as a weapon of last resort, to be avoided if at all possible.

I urge my colleagues to support the Workplace Fairness Act. We must close the legal loophole created by Mackay, which sabotages our law's promise to workers of a right to bargain collectively free from employer interference or retaliation and undermines our law's central policy of promoting productive and cooperative industrial relations. H.R. 5 would restore the balance of bargaining power between employers and workers which is now unfairly tipped in favor of the employer.

Mr. LAGOMARSINO. Mr. Chairman, I rise in opposition to H.R. 5, the Striker Protection Act.

For over 50 years Congress has supported the worker's right to strike during a labor dispute and the employer's right to continue operations during the strike. I continue to support the collective bargaining process and the rights of employees to join together in solidarity and withhold their labor as a bargaining tool. Further, I continue to support the rights of workers to join together in an unfair labor strike without the fear of being permanently replaced. However, I will not support legislation which forces one party in a labor dispute, in this case the employer, to bear the entire burden of the risks and costs associated with a strike.

Nobody wins in a labor strike. Workers lose paychecks and employers lose a stable, experienced work force. A strike is, and should be, a last resort in the effort to reach a compromise in a labor dispute. It is a powerful

tool, and even the threat of its use will often encourage an agreement.

Under H.R. 5, a strike no longer serves as a powerful tool to encourage compromise, but instead serves as an economic weapon that discourages good faith bargaining. This legislation would encourage more strikes by giving labor organizations unfair leverage in the bargaining process.

The effects of this legislation could seriously weaken the U.S. economy at a time when our Nation's economic health and international competitiveness are critical. I urge my colleagues to join me in opposing H.R. 5.

Mr. SYNAR. Mr. Chairman, today I rise in support of H.R. 5, which bans the use of permanent replacement workers during legal union strikes. This legislation is vital to maintain a healthy, balanced relationship between management and labor.

The right to strike is labor's single most effective bargaining tool in the collective bargaining process. Since 1935 the National Labor Relations Act [NLRA] has protected the rights of workers to join unions and engage in collective bargaining. A key component to that right is that employers may not fire employees for engaging in union activities. In the 1938 Mackay decision, the Supreme Court ruled that the National Labor Relations Act grants employers the right to hire permanent replacements for striking workers. This decision has governed labor-management relations ever since.

So, as we deal with this legislation we are being asked the question, "Why now?" The answer is simple: Up until the 1980's employers valued experienced, loyal, and well-trained employees, and did not generally take advantage of this ruling. Unfortunately, one needs only to look at the actions taken in a number of recent well-known strikes such as Greyhound, Eastern and Continental airlines, TWA, and International Paper to see that this trend no longer holds. We must not allow the right to strike to become a hollow, useless right. It is very important that we protect the right to strike as a credible protection for workers' rights in this country.

However, I am also concerned that the delicate balance between labor and management be kept even. Some people argue that H.R. 5 shifts the balance too far in favor of labor, however there is very little difference between being fired and being permanently replaced. This legislation in no way alters an employer's right to hire temporary replacements. The hiring of temporary replacement workers has long been considered an effective management tool to keep a business open during an organized labor strike. Other techniques, such as temporarily reassigning managment to strikers' jobs, stockpiling products in anticipation of a strike, or subcontracting out certain jobs, are also still effective means of dealing with strikes. Employers do win strikes without ever hiring or threatening to hire permanent replacement workers.

Concerns have also been expressed that this bill would encourage more strikes, but it is not reasonable to assume that employees would prefer to strike than work out an agreement and remain on the job and bring home necessary paychecks. Going on strike is never an easy decision for workers, and it is not taken lightly. Additionally, this bill applies to only organized union strikes, which should prevent sudden, unpredictable work stoppages by employees who have no clearly defined reasons for striking or negotiation structure.

And finally, concerns have been expressed by some in the business community that, at a time when the issue of American industrial competitiveness is constantly at the forefront it is inappropriate to alter the status of management-labor relations. I disagree. In fact, both Japan and Germany guarantee their workers the right to reinstatement after a strike. Most of our big competitors favor the use of highly trained, well-paid, loyal work force. They also favor fostering an atmosphere of cooperative between management and labor.

I think all of us would like to see a cooperative relationship exist between management and labor. Let's start working on building that relationship now. As long as workers can be permanently replaced for striking, the relationship between labor and management will remain tense. I am voting for H.R. 5 because it will restore workers' faith in the collective bargaining process and return the labor-management relationship to an even balance. Employers will retain their right to hire temporary replacements during any strike, and employees can join in organized labor activities without losing their jobs.

Mrs. SLAUGHTER of New York. Mr. Chairman, today I am proud to rise in support of America's working men and women and their families. H.R. 5, the Workplace Fairness Act, prohibits employers from permanently replacing organized workers striking on economic issues, thereby eliminating a loophole which threatens to unravel American workers' longheld right to strike.

Franklin Roosevelt's New Deal guaranteed workers the right to strike without fear of being fired. But since 1981, thousands of working Americans have been permanently replaced for standing up for benefits they were promised by their employers. It's hard to believe this could happen in America, but in the 1980's corporate profiteers like Frank Lorenzo have replaced striking workers and tried to gut the very fundamental right to strike. The balance between labor and management in collective bargaining has begun to shift against workers. This begins to explain why working Americans have suffered a 6-percent decline in weekly wages during the last 10 years.

Opponents of this bill charge that we are giving workers a blank check, encouraging them to strike, and endangering our Nation's ability to compete abroad. Nothing could be further from the truth. Any worker will tell you that going out on strike is a last resort. Loss of wages and benefits can devastate a working family. Moreover, this bill applies only to organized workers, responding to business concerns that unorganized workers could walk off the job over an unclear issue and have no clear bargaining agent to negotiate with an employer.

In almost every industrialized country, the right to strike is recognized as a basic workers' right. If Germany and Japan can protect their workers from being permanently replaced and remain competitive in the global marketplace, surely we can do no less here.

Mr. PORTER. Mr. Chairman, to protect the interests of striking workers and employers alike, our labor laws have maintained a clear and consistent distinction between two types of striking workers: Those who walk off their jobs due to an employer's abusive labor practices—an unfair labor practices strike—and those who voluntarily strike for higher pay or increased benefits—economic strike.

For more than 50 years, the distinction between unfair labor practice disputes and economic strikes has been considered so essential to fair and balanced labor relations that, until recently, it had never been questioned—even by organized labor.

But a bill now before Congress banning permanent replacements (H.R. 5) would eliminate this distinction, dismiss any notion of equitable bargaining terms, and grant unions unlimited leverage during strikes and bargaining.

Because strikers in an unfair labor practice dispute have been forced to the picket line by an employer's illegal practices, they are guaranteed immediate reinstatement with full benefits after the strike is over. Current law recognizes that an employer who violates employees' legal rights should not be able to continue business as usual while operating outside the law.

When organized labor does resort to the economic strike, current law already prohibits discrimination based on union membership, mandates preferential rehiring of returning strikers with full benefits as vacancies occur, and makes illegal any promised preferential treatment of prospective employees.

But in an economic strike, such as a strike for higher pay, the law also recognizes that an employer who has not broken the law—who simply disagrees with the unions economic demands—has the right to try to stay in business by hiring replacement workers. To attract such replacements, it is often necessary to offer permanent replacements. However, when a company does bring in permanent replacements, it is prohibited from offering them a better deal than it offers the strikers at the bargaining table.

Current law is intended to discourage every dispute from triggering a strike. When union members voluntarily walk away from $38,000-a-year production jobs in Maine, or $98,000-a-year jobs as pilots, or $200,000-a-year jobs as professional football players, they know that there is a substantial risk that other workers might find such pay acceptable.

Thus an economic strike is a calculated risk on the part of the union. A union striking for economic demands, that may or may not be reasonable, should not be afforded the same immunity to risk of replacement given to workers whose legal rights have been violated by their employer.

Under the provisions of House Resolution 5, Representative WILLIAM CLAY's legislation, unions would no longer have to weigh the risks of job loss against the reasonableness of their economic demand. Under this proposal, strikers making any economic demand, no matter how outrageous, would have the same right to automatic reinstatement after the strike as workers protesting an employer's unfair labor practices.

A permanent replacements ban would abolish the mutual risk faced by opposing sides in an economic strike—the important mutual risk that pressures both management and labor to-

ward compromise and conciliation, and makes both sides think twice about demands or policies likely to precipitate a strike.

The measure does not purport to correct some loophole or address a pervasive problem. Two General Accounting Office reports have shown that permanent replacements are used in only 15 percent to 17 percent of strikes, and affects less than 4 percent of all strikers.

The infrequency with which employers have exercised the option to replace workers illustrates the balance of mutual risks under current law, which helps bring unioins and management closer to reconciliation and continued productivity.

What the proposed legislation would do is allow unions to engage in no-risk economic strikes at a time when 73 percent of all Americans—according to a recent Time/CNN poll—believe that organized labor has either too much or just the right amount of power.

Disproportionate leverage for either management or labor is just bad public policy, and the proposed permanent replacements ban represents an unjustified shift of power to labor's side of the bargaining table.

Strikes have always been an option of last resort. If enacted, this legislation would make them the first.

For these reasons, Mr. Chairman, it is crystal clear that passage of this legislation into law would undermine the competitiveness of the American economy at exactly the time when it needs to be its strongest.

Let us hope that the defeat of this measure will mark the termination of a century of labor-management strife in America and both sides will turn toward the increased cooperation and partnership between them necessary to meet and exceed the tough international competition that we face.

Mr. EDWARDS of California. Mr. Chairman, the legislation we will vote on today will not grant any additional rights to union workers. It will only ensure that one of the most important labor rights, the right to strike, is preserved. That is why I rise today in strong support of H.R. 5.

Over the past 10 years, we have seen a dramatic shift in the balance of power between labor and management. Since President Reagan's decision to fire the air traffic controllers in 1981, it has become acceptable for management to permanently replace striking workers. This has had a destructive effect on the collective-bargaining process as employers have been reluctant to negotiate in good faith when they know they can simply hire new workers if they can force a strike.

H.R. 5 would give meaning to the right to strike guaranteed by the Federal Government. Although the law says that a worker cannot be fired for going on strike, the law also says that an employer is free to hire new permanent employees. H.R. 5 would get rid of this contradiction by clearly stating that employers do not have the option of hiring new employees in the event of a strike.

Finally, it is said that H.R. 5 is anticompetitive, yet the opposite appears to be true. According to the Library of Congress, among the industrialized nations, only Great Britain and certain Canadian provinces allow the hiring of permanent replacement workers. If Japan and Germany can compete in the global marketplace using replacement worker prohibitions, then I believe the United States can also compete with a similar law in place. I urge my colleagues to join me in supporting H.R. 5.

Mr. GEJDENSON. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act, and urge my colleagues to join me in voting for this important legislation.

Let's get a few things clear about the Workplace Fairness Act. First of all, it's illegal to fire a worker for engaging in union activity. So what is the difference between being fired and being permanently replaced? The law permits the striking worker to be permanently replaced. This loophole must be closed if America's working men and women are to have a viable option for action if their employers fail to bargain in good faith. Unless we close the loophole, there is no incentive for management to negotiate with workers who have no effective economic tools at their disposal.

While protecting the effectiveness of the right to strike, the Workplace Fairness Act also provides for businesses to keep their operations going by hiring temporary replacements. But it is integral to the balance of labor-management relations that when a strike is settled, workers can return to their jobs.

The decision to strike is not an easy one for America's working men and women. A strike means serious hardship, loss of income, strains family savings in order to pay their obligations, and causes tensions that hurt family relationships. It can take years to recoup these financial losses. Protecting the negotiating value of the right to strike will not make strike conditions easier for America's working families, and I reject the notion that the Workplace Fairness Act encourages strikes.

Passage of H.R. 5 will ensure the fairness and effectiveness of collective bargaining. H.R. 5 protects the rights of workers to negotiate for fair wages and safe working conditions. The bill also protects the rights of employers to hire temporary replacement workers during a strike in order to remain a viable business enterprise.

Support good labor-management relations and fairness in the workplace. Support H.R. 5, the Workplace Fairness Act.

Mr. FALEOMAVAEGA. Mr. Chairman, I rise today in support of H.R. 5, the Workplace Fairness Act. This bill proposes to amend the National Labor Relations Act and the Railway Labor Act to prohibit employers from hiring permanent replacements for workers who are striking over economic issues as well as prohibiting employers from giving any employment advantage to a striking worker who crosses a picket line to return to work before the end of a strike.

The administration remains convinced that H.R. 5 would be detrimental to America's economic health. However, this bill, if passed, will improve both the standard of living for American workers and the competitiveness of American industry. Working Americans—union and nonunion alike—have suffered from declining wages over the last decade. Real weekly wages have dropped almost 6 percent, in part as a result of strengthened management position in the last 10 years. That stronger hand has led to a much more unfair distribution of income in this country. One of the reasons for the decline in wages is that employers have more frequently resorted to hiring permanent replacements for strikers, dragging down the wages of all workers, whether union or nonunion.

During the same period in which U.S. real wages fell, the American competitive position in the world market simultaneously deteriorated, resulting in a huge deficit today. Our major trading partners have pursued a policy of raising wages and maintaining a stable and cooperative relationship between management and labor, a relationship which they have used to sharpen their competitiveness in the world economy. All our major trade competitors, including Japan and Germany, prohibit the use of permanent replacements for strikers, believing that such a policy encourages a less contentious labor-management relationship. Our competitors' experience proves that businesses do not need the permanent replacement weapon to succeed.

The administration also suggests that H.R. 5 would destroy the economic balance between labor and management in collective bargaining. They claim that the employee's risk of permanent replacement is balanced by the employer's risk that a strike will threaten productivity and profits. They argue that this balance of risks promotes the settlement of collective bargaining disputes.

Mr. Chairman, contrary to this view, I believe that there is no balance in these relative risks. Once an employee is on strike, he or she loses pay, benefit accruals, health care coverage, expenses for food, mortgage and car payments, tuition, medical bills, and so forth. It makes no difference if the striker is replaced or not. On the other hand, the employer's well-being is unaffected and employers are also permitted to replace all of the strikers for the duration of the strike. I believe the only real equivalent of the strikers' permanent replacement would be forcing the employers to permanently cease operation.

H.R. 5 is needed because whether a negotiation results in a strike or not, the threat or permanent replacements always skews the process. A recent GAO study found that in 35 percent of all strikes the use of permanent replacements was expressly threatened and in 17 percent of the strikes the threat was carried out. This study further indicates that unions and employers are in agreement that the use of permanent replacements has grown in the eighties.

Workers view a strike as a weapon of last resort. Strike means no paycheck and personal and family hardships. Therefore, enactment of this bill will in no way increase the willingness of workers to strike. On the other hand, employers can continue to operate during strikes without permanently replacing workers through a variety of options. They can hire temporary replacements, use supervisory and management personnel, transfer or subcontract work, or stockpile in advance of a strike.

This bill provides equal protection for all workers. It protects those who choose to strike from being permanently replaced or otherwise disadvantaged due to an employer's preference for those who did not strike. Workers who choose not to strike are equally free to do so. Furthermore, this bill does not require em-

ployers to reinstate strikers who engage in violent tactics. It only applies to workers who engage in lawful economic strikes.

I am proud to be a cosponsor of this important legislation along with my distinguished colleagues. When you vote today, please vote in support of H.R. 5.

Mr. SCHEUER. Mr. Chairman, I rise to oppose the gentleman from Pennsylvania's amendment and to strongly support H.R. 5, the Workplace Fairness Act, which I believe greatly enhances the National Labor Relations and the Railway Labor Acts.

I am proud to be a cosponsor of H.R. 5 because I believe it goes a long way toward rectifying an imbalance in the negotiating power of management and labor that has developed since the enactment of these acts in 1935 and 1926, respectively.

Currently, under the NLRA and RLA, striking workers are not protected from permanent replacement. When a strike is over economic issues, such as wages or working conditions, employers can simply hire new workers, giving them the strikers' jobs, permanently. At the conclusion of such a strike, the striking workers must settle for, at best preferential consideration for new positions that open up in the future.

Strikers and court decisions of the past decade have demonstrated that these provisions must be updated.

In its TWA decision of 1989, the Supreme Court opened the door for crossover employees—that is, striking workers who cross the picket line and return to work—to displace other workers who continue to strike, even when they have more seniority.

The 1985 Continental and 1989 Eastern Airline strikes showed how an employer—in these cases Frank Lorenzo—can cut wages and eliminate benefits, and, when its workers strike in protest, completely replace them with permanent nonunion labor.

The pilots, flight attendants, and machinists were ready to accept some cuts, but when faced with wholesale elimination of benefits, exercised their right to strike. In return, they found themselves out of their jobs—permanently.

Passage of H.R. 5 would return this skewed bargaining relationship to balance by prohibiting the hiring of permanent replacement workers. Employers would still be able to hire temporary workers during a strike to stay in operation, but at the strike's conclusion, striking workers would regain their jobs.

The Goodling amendment, by allowing employers to hire permanent replacement workers after 8 weeks, effectively limits strikers' right to strike to less than 2 months.

With the exception of Britain, none of our fellow industrialized nations—Belgium, Canada, France, Germany, Greece, Italy, the Netherlands, Sweden, and Japan—allow employers to hire permanent replacement workers in strike situations.

That is why I believe provisions such as those in H.R. 5 are long overdue, and I must vote against the Goodling amendment.

Mr. FEIGHAN. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act of 1991.

What we are trying to accomplish today can be summed up in one word: fairness.

We need to restore fairness to the labor-management relationship. In 1935, the National Labor Relations Act established rules that placed labor and management on equal footing during contract disputes. It unequivocally guarantees the right to strike.

For nearly 50 years, fairness prevailed and the right to strike was recognized by all. That is, until some firms, encouraged by the antilabor stance of the Reagan administration, took advantage of a loophole in the law and hired permanent replacement workers to break strikes.

The threat of permanent replacement has been held over the negotiating table. Faced with this club, labor negotiators often had no choice but to make concessions and to give in to unreasonable demands of management.

Mr. Chairman, the right to strike is a fundamental American right. It is the critical means of leverage that workers have when management doesn't act in good faith at the negotiating table. Without the right to strike, the deck is stacked against labor.

Opponents of this bill will tell you that without it, labor still has the right to strike. They are wrong. Opponents will say that permanently replacing striking workers isn't the same thing as firing them. They are wrong. It is an insult to millions of hard-working Americans. And it is wrong.

Mr. Speaker, most managers and executives are honorable and fair and go to the bargaining table in the best of faith. I know many who deeply respect their workers. Most companies don't use the bully tactics of wielding the threat of striker replacement during negotiations.

But there are still a few Frank Lorenzos out there. And there will be more Frank Lorenzos if the law stacks the deck against American workers.

America doesn't need our entire industry to go the way of Eastern Airlines. America needs the Workplace Fairness Act. Workers with rights and the pay and health care they deserve are good workers. And good workers increase productivity. For that, the entire country is better off.

Mr. Chairman, this debate isn't about the well-being of labor. It's about the well-being of all America. I strongly urge all my colleagues to vote yes on this bill.

Mr. COSTELLO. Mr. Chairman, I rise today in strong support of H.R. 5, the Workplace Fairness Act of 1991.

This legislation seeks to address a basic, underlying fault in the National Labor Relations Act of 1935 and also in the Railway Labor Act of 1928, bills which sought to instill some balance between labor and management regarding the collective-bargaining process. This law allowed workers to use their ultimate leverage—their job—to join collectively and strike for improved working conditions and safety standards from their employer.

The right to strike has allowed employees to fight for these improvements without an employer threatening their jobs, as the right to strike without fear of job loss was guaranteed. A 1938 court decision, NLRB versus Mackay Radio, did however allow employers to continue their business by hiring permanent replacements during a strike.

This provision was rarely used until the 1980's, when several large corporations used the Mackay decision to ignore an employee's right to strike by hiring permanent replacement workers. Throughout the last decade, we have seen management use this option to avoid participating in the collective-bargaining process. If anyone doubts the effectiveness of this provision, one needs only look at the Nation's air traffic controllers, who were fired in 1980 by President Reagan and permanently replaced. Many of those fired in 1980 have never been rehired by the Federal Government.

Mr. Chairman, this bill is necessary to restore confidence in the collective-bargaining process. It is unfortunate that a few employers are turning this provision into a threat to intimidate labor unions from striking, and it clearly is being used more and more as a tool by some companies to force labor's hand during negotiations.

H.R. 5 would prohibit employers from hiring permanent replacements for workers who are striking over economic issues, such as wages, benefits, and working conditions. The legislation also forbids employers from giving any advantage to a striking worker who crosses a picket line to return to work before the end of a strike.

This legislation is essential to restoring the necessary balance between labor and management for the collective-bargaining process. Its passage will ensure that honest, straightforward negotiations can go forward without a high degree of suspicion on either side. Working men and women in America continue to see a decline in their wages, and any continuation of the use of permanent replacements will only erode further the position of hard-working Americans.

Mr. MFUME. Mr. Chairman, during the 1980's real average weekly wages decreased. At the same time, America's competitive advantage in the world economic market deteriorated and precipitated our trade deficit and imbalance today.

While some pundits may argue that the wage decrease was due to managements strengthened position at the negotiating table, I am far less concerned about affixing the blame than I am at finding a reasonable solution to this prevailing problem.

Most of our major trading partners have pursued policies which increase wages and maintain a cooperative relationship between management and labor. Such policies are inextricably linked to their surge in competitiveness and international market strength. Both Japan and Germany prohibit the use of permanent replacements for striking workers, believing that such policy encourages a less contentious labor-management relationship.

H.R. 5 amends the National Labor Relations Act and the Railway Labor Act to prohibit employers from hiring permanent replacements for workers who are striking over economic reasons such as wages, benefits, and working conditions. Additionally, H.R. 5 prohibits employers from giving any employment advantage to a striking worker who crosses a picket line to return to work before the end of a strike.

Mr. Chairman, the Workplace Fairness Act can help our Nation restore a fair balance between labor and management, and will improve both the standards of living for American workers and American competitiveness.

Mr. Chairman, an employee's right to strike is the strongest weapon they have in the collective-bargaining process. If employers continue to be allowed to hire permanent replacements, workers risk losing their jobs every time they participate in a wage strike. It is time to close the loophole in Federal law that prohibits employers from firing striking workers, but allows employers to permanently replace striking workers.

This loophole has existed for a little over 50 years, but during the 1980's—starting with the air traffic controllers—employers began using permanent replacements pervasively.

Employers can operate during strikes without permanent replacements. Many options exists for employers such as hiring temporary replacements, using management and supervisors to run an operation, subcontracting or transferring work prior to a strike and so on.

A workers right to reinstatement must be upheld and H.R. 5 is the vehicle to carry out a policy that will advance the interests of the American worker and American competitiveness.

The CHAIRMAN. Pursuant to the rule, the amendment in the nature of a substitute consisting of the text printed in part I of House Report 102-152 shall be considered as an original bill for the purpose of amendment and shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or", and

(2) by adding at the end thereof the following new paragraph:

"(6)(i) to offer, or to grant, the status of a permanent replacement employee to an individual for performing bargaining unit work for the employer during a labor dispute between the employer and the labor organization that is acting as the collective bargaining representative involved in the dispute; or

"(ii) to offer, or grant, an individual any employment preference based on the fact that such individual performed bargaining unit work, or indicated a willingness to perform such work, during labor dispute over an individual who—

"(A) was an employee of the employer at the commencement of the dispute;

"(B) in connection with such dispute has exercised the right to join, to assist, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection through the labor organization that is acting as the collective bargaining representative involved in the dispute; and

"(C) is working for, or has unconditionally offered to return to work for, the employer.".

SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth."; and

(2) by adding at the end the following:

"(b) No carrier, or officer or agent of the carrier, shall—

"(1) offer or grant the status of a permanent replacement employee to an individual for performing work in a craft or class for the carrier during a dispute which involves the craft or class and which is between the carrier and the labor organization that is acting as the collective bargaining representative involved in the dispute; or

"(2) offer or grant an individual any other employment preference based on the fact that such individual performed work in a craft or class, or indicated a willingness to perform such work, during a dispute over an individual who—

"(A) was an employee of the carrier at the commencement of the dispute;

"(B) in connection with such dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through the labor organization that is acting as the collective bargaining representative involved in the dispute; and

"(C) is working for, or has unconditionally offered to return to work for, the carrier.".

The CHAIRMAN. No amendment to said substitute shall be in order except those amendments printed in part II of House Report 102-152. Said amendments shall be considered in the order and manner specified in said report, shall be considered as having been read, and shall not be subject to amendment except as specified in said report. Debate time specified for each amendment shall be equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

It is now in order to consider amendment No. 1 printed in part II of House Report 102-152.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. PETERSON OF FLORIDA

Mr. PETERSON of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. PETERSON of Florida: Strike all after the enacting clause and insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or", and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or to take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization—

"(I) was the certified or recognized exclusive representative, or

"(II) at least 30 days prior to the commencement of the dispute had filed a petition pursuant to section 9(c)(1) on the basis of written authorizations by a majority of the unit employees, and the Board has not completed the representation proceeding; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed, or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute.".

SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth."; and

(2) by adding at the end the following: "(b) No carrier, or officer or agent of the carrier, shall—

"(1) offer or grant the status of a permanent replacement employee to an individual for performing work in a craft or class for the carrier during a dispute which involves the craft or class and which is between the carrier and the labor organization that is acting as the collective bargaining representative involved in the dispute; or

"(2) offer or grant an individual any other employment preference based on the fact that such individual performed work in a craft or class, or indicated a willingness to perform such work, during a dispute over an individual who—

"(A) was an employee of the carrier at the commencement of the dispute;

"(B) in connection with such dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through the labor organization that is acting as the collective bargaining representative involved in the dispute; and

"(C) is working for, or has unconditionally offered to return to work for, the carrier.".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. GOODLING AS A SUBSTITUTE FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. PETERSON OF FLORIDA

Mr. GOODLING. Mr. Chairman, I offer an amendment in the nature of a substitute as a substitute for the amendment in the nature of a substitute.

The CHAIRMAN. The clerk will designate the amendment in the nature of a substitute offered as a substitute for the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute offered as a substitute for the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. GOODLING as a substitute for the amendment in the nature of a substitute offered by Mr. PETERSON of Florida: In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. RESTRICTION ON HIRING DURING ECONOMIC STRIKE.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or", and

(2) by adding at the end the following:

"(6) to hire or to threaten to hire permanent replacement workers during the first eight weeks of an economic strike.

Nothing in paragraph (6) shall be construed to prohibit an employer from permanently replacing an employee—

(A) who engages in violence or threats of violence; or

(B) who secures employment equivalent to that which the employee held prior to such strike.".

SEC. 2. VOTING BY STRIKING EMPLOYEES.

The second sentence of section 9(c)(3) of the National Labor Relations Act (29 U.S.C. 159(c)(3)) is amended by striking "twelve months" and inserting "eighteen months".

SEC. 3. SECRET BALLOT.

Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following:

"(8) to call for an economic strike unless a simple majority of the employees voting in the bargaining units vote by secret ballot to conduct such strike.".

SEC. 4. SPEEDY PROCESSING OF UNFAIR LABOR CASES.

It is the sense of the Congress that the National Labor Relations Board should give first priority and use the utmost speed to process unfair labor practice cases that involve the reinstatement of strikers who have been permanently replaced.

SEC. 5. EVALUATION AND IMPROVEMENT OF NATIONAL LABOR RELATIONS BOARD.

It is the sense of the Congress that the President should appoint an Executive Commission on Reform of the National Labor Relations Board to recommend to the President and the Congress, within one year of its appointment—

(1) statutory changes to the procedures for filing vacancies of National Labor Relations Board members, and changes in the number of Board members authorized by the National Labor Relations Act;

(2) changes in the number and functions of personnel at the National Labor Relations Board;

(3) internal procedural changes within the National Labor Relations Board to decrease or eliminate delays in processing cases;

(4) appropriate increases in Federal funding for the National Labor Relations Board so that it may better carry out its mission; and

(5) changes to the National Labor Relations Act which will provide expedited relief for certain complaints and actions brought under the Act.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 30 minutes, and a Member opposed will be recognized for 30 minutes.

The Chair would inquire, what Member will control the time in opposition to the amendment offered by the gentleman from Pennsylvania [Mr. GOODLING]?

Mr. FORD of Michigan. Mr. Chairman, I will be controlling the time.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Chairman, I yield myself such time as I may consume.

□ 1430

Mr. Chairman, first of all I want to thank my chairman of the Committee on Education and Labor because without my chairman of the Committee on Education and Labor's support I would not be here offering this today.

Mr. Chairman, I offer this amendment, or the substitute, for several reasons. First of all, 6 or 7 months ago when I met with my labor leaders and rank-and-file in labor, we met in order to talk about H.R. 5. At that time I told them that H.R. 5, in my estimation, could not become law and probably should not become law, because it does not do what they want it to do to help them; that it may have the opposite effect; that if they are interested in something beyond confrontation, if they are interested in something other than an issue, I would be very happy to try to work out a substitute that would meet the needs that they are talking about.

So, first of all, I ask them to tell me what their problems are, what do they see that is wrong at the present time. The first thing, of course, that they mentioned is air traffic control firing. I tell them immediately that is not the issue, that has nothing to do with H.R. 5.

Now let us discuss what you see are the problems with the present National Labor Relations Act as far as the private sector is concerned.

No. 1, they say that some employers, some employers, line up replacements before there is even a strike. They have the file right there, they have the applications, they may have even spoken to them about being replacements.

I said, if that is a problem and I would be the first to admit there probably are some unscrupulous people on both sides of this issue who would do something like that, we will control that by first of all saying that they cannot hire permanent replacements during the first 8 weeks of a strike.

Now, why do I make that offer? Because, as I said earlier, the purpose of this act is to bring both sides together at the negotiating table, solve their problems without a strike, without confrontation. So, by having this 8-weeks' period, it brings them and forces them to that negotiating table and how they know they will really have to get down to business, down to brass tacks.

They said that the second problem that they have is that some unscrupulous companies may use this as a way to get rid of the unions, they want to break the unions.

I say, well, I would offer them in response to that 18 months, when you as a replaced striker will continue to participate, not the 12 months that you are guaranteed now, but 18 months. It seems to me that should certainly take away any enthusiasm on the part of some who may be unscrupulous in management to try to break the union.

The third concern that they had dealt with the lack of speed in which their issues before the National Labor Relations Board are handled. And I do not think there is anyone in Congress who does not believe that we should do something to expedite this process.

I indicated to them that we would have included in my substitute legislation that would call for a sense-of-Congress resolution because I could not go into the legislative process, indicating that we want this process speeded up because we can eliminate many of the problems probably if it is speeded up.

Added to that, Mrs. ROUKEMA had what I think is an excellent addition, where we would have a sense-of-Congress resolution that the President will appoint a commission to immediately study what those problems are. Now, if you talk to the general counsel, they will say it is the NLRB, and if you talk to the Board, they will say it is general counsel who is causing all the problems. They report back then within a year to the Congress of the United States what are these problems so that we can intelligently look at them and discuss what the remedies are.

So I believe by coming up with that substitute, we can solve the problems that are perceived to be there. I say "perceived" because, of course, I know about Eastern Air Lines and, of course, I know about Pittston and, of course, I know about Greyhound. All of them were stupid in the manner in which they handled the problem. As a matter of fact, most of those are out of business. Pittston, in the last quarter, was losing its shirt, or losing their shirts, whichever is proper. So there is no question that there are those kinds of problems.

I offer my substitute because of my concern not for the leadership of those companies but for my concern of what happened to the laborers and their families because the situation was not handled and was not handled quickly, as it should have been.

So I believe, on balance, I have offered what will eventually have to be the direction we are going to go because I still believe that H.R. 5 in its present form, and above all with the substitute that will be put to it, will never become law. Then we have not helped anybody, we have just had another one of those great exercises and debate on the floor of the House that accomplished nothing for the people we want to try to help.

So I would hope that you would look at the substitute carefully and that you would realize that if we truly want to help the people, if we truly want to help laborers, we want to then make sure we bring about this healing process in such a manner that people are not hurt, labor or management, over a long period of time, so that no matter

what the end result may be they can never get back what it is they have lost.

Again, 8 weeks before you can think about hiring a permanent replacement. Now, somebody may say, "Well, gee, they may promise this temporary employee that 'We are going to hire you temporary but you are going to be permanent at the end of 8 weeks.' "

Boy, is that company in trouble. What a foolish move that would be. Some may be foolish enough to try it, but, boy, will they be burned in the long run.

Keep in mind that in recent years, because of the whole competitiveness issue, labor and management, with few exceptions, have been working more closely than ever in the history of this country because they understand labor cannot survive without management, management cannot survive without labor.

So with my substitute, I believe we fine-tune the series of laws that work very effectively but must be fine-tuned to deal just with the issues now and in the near future. The cooperation between labor and management just positively has to grow. The survival of our country depends on that. They know that. The competition is so great that we just cannot lose to other countries because we cannot solve things peacefully and that we cannot have all sides become successful in the negotiating process.

So, again, I would ask that you look carefully at the substitute before you reject it out of hand. Let me just make one last observation.

In our conference today, a gentleman got up and said, "All of labor hates your substitute; all of management hates your substitute." I think what he was saying, "You must be an idiot. Since everybody hates your substitute, why are you offering it?"

□ 1440

Mr. Chairman, of course all of labor hates my substitute, if they cannot get H.R. 5, which I say they cannot get. I ask, "Why wouldn't you want the whole loaf if you could possibly get it?" And of course all of management hates my substitute because they do not want any changes.

So, I realize. I am not naive. I can count. It will be embarrassing because my newspapers will say, "Goodling only gets 60 votes," or whatever the amount on each side is, but I say, "Come back 5 years from now, and Goodling won't look so stupid, and perhaps he will have given some answers to the problems that are facing us that will help us resolve the problem in a peaceful manner."

Mr. FORD of Michigan. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I take this time first to assure the Chair and the House of my continuing admiration for the hard work that the ranking Republican on the committee does, the gentleman from Pennsylvania [Mr. GOODLING]. I know how he has agonized over this issue. We have discussed it many times, and I want to tell my colleagues that I believe that he is proceeding with his amendment out of the best of motives, and what he just said on the floor is what he truly believes.

I wish, as a matter of fact, that I was in a position to work it out just a little bit further with him so that I could support this amendment. He has some positive points in his substitute. The first and foremost is that the substitute recognizes the need to change the labor relations law to provide some protection, in this case limited, but some protection for workers who strike, so that settles that argument at the outset. Protecting workers for 8 weeks in the Goodling amendment sounds good because it is better than nothing, except that I am afraid that, like cooling-off periods, what that means is that everybody would be encouraged to sit back and do nothing for 7 weeks and 6 days and then finally rush to the table in the last day.

More importantly, Mr. Chairman, the Goodling substitute would give replaced workers something that they do not now have in extending from 1 year to 18 months the time when permanently replaced workers are eligible to vote on a decertification election, so it would take at least 50 percent as much time to replace a union using this tactic as it does now.

In addition, more importantly the Goodling amendment, and we would all join in this, calls for the National Labor Relations Board to use the utmost speed to process unfair labor practice cases that involve the reinstatement of strikers that have been permanently replaced. We applaud that, and, if we are successful in passing H.R. 5, I will work with the gentleman from Pennsylvania [Mr. GOODLING] hereafter in this Congress, or in the next one, if necessary, to add that to what we are doing in H.R. 5 because it is a laudable idea, and it is something we ought to be doing.

I wish, as I said, that we had come together during these discussions, but I want to make it clear on the public record that in opposing the amendment of the gentleman from Pennsylvania [Mr. GOODLING] I do not oppose Mr. GOODLING's motives or his efforts to find a solution to this problem. I hope that the Senate will give full consideration to the anguish that he, and even those of us on this side, have gone through trying to find an accommodation for our colleagues, and will act accordingly.

First, it is commendable that the substitute recognizes the need for change in the law and does provide some limited protection for workers who strike.

Positive points in the substitute: Protect workers who strike for 8 weeks, extends the period that permanently replaced workers are eligible to vote in a union election from 1 year to 18 months; and calls for the National Labor Relations Board to "use the utmost speed to process unfair labor practices cases that involve the reinstatement of strikers who have been permanently replaced."

Second, unfortunately the substitute does not go far enough. The limitation of 8 weeks on the prohibition against permanent replacement of strikers will frequently encourage employers to prolong strikes to last 8 weeks, because only then will they be able to permanently replace their employees. An employer need only wait 8 weeks to retain its current ability to permanently replace the strikers. The amendment would only slightly limit the current damage to labor relations of the Mackay doctrine. The requirement of secret ballot strike vote before workers can lawfully strike is an unfair infringement on the democratic rights of union members. Many unions have such requirements in their constitutions. These requirements were duly voted on by the union membership. It is not appropriate for Congress to dictate to workers how they should run their unions.

We do not place any similar requirements on employers. An equivalent provision on an employer might be a requirement that all stockholders approve by a two-third vote management's final contract offer to the union.

Mr Chairman, I yield 4 minutes to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Chairman, I, too, greatly respect the gentleman from Pennsylvania [Mr. GOODLING], but I do want to dissent from one thing he said. He indicated that he thought labor and management are working more closely today than ever before. That certainly is not the view from where I sit. When I grew up, we did have, I think, an era of good feeling between organized labor and management. I think in the 1980's it came to an end, and I am for this bill because I think it helps to restore incentives to settle rather than continuing incentives to fight, and I think there is no incentive to settle unless the pain of a strike is equally distributed on both sides of the bargaining table. And I think this bill helps to redistribute that pain just a bit.

However, Mr. Chairman, my main purpose in coming here today is to discuss the context in which this bill is being debated. Opponents talk about this bill as though we are abandoning something which has achieved great balance and fairness. The fact is we have had just the opposite in the 1980s. In the last 12 years we have had the greatest economic imbalance in this country of any decade since the 1920s.

Here is what I mean: From 1980 through today the richest 1 percent of people in this country have had their incomes almost doubled, from $300,000 to about $550,000 today. Meanwhile a worker at exactly the middle of the income stream in this country has seen

his wages decline by more than $1,000 in real-dollar terms, in purchasing power.

In 1960 the chief executive officer of the 100 largest corporations in this country, nonbanking corporations, on average earned 12 times as much as the average worker in their plant. Today that same CEO on average earns 72 times as much as the average worker in that plant. Since 1980 the income of the richest 1 percent of people in this society has increased by more than the income for 90 percent of American families combined. I ask if we can call that a balanced outcome.

Mr. Chairman, If you take a look at the richest 1 percent of people in this country today, 2½ million people, last year they made $565 billion. That is more than the combined incomes of 40 percent of all Americans, over 100 million Americans. That is the context in which we are addressing this bill. We are addressing it at a time when the average worker in this society, the average wage earner, has lost, in real-dollar terms, more than $1 an hour in the purchasing power of his wage.

Now this bill is not going to solve all of those problems obviously. We need more productivity increases. We need more training. We need more education. We need more investment to do that. But what this bill does is to help in a very small degree restore some sense of balance, some sense of equal power at the bargaining table, and I do believe that that will help contribute to a more fair outcome, and I do believe it will help contribute to an incentive on both sides to settle rather than to fight.

The other point I would like to raise is that some people are saying,

Isn't this terrible? This bill sets up one set of rules for unionized workers and another set of rules for other workers.

I would point out that we cannot have it both ways. That is done in the amendment of the gentleman from Florida [Mr. PETERSON] in order to accommodate business interests who are objecting because of the lack of clarity, who did not want nonunion labor to be covered. So, I do not think the business community can have it both ways.

Mr. Chairman, I urge my colleagues to support the bill and oppose the amendment.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. MCCLOSKEY].

Mr. MCCLOSKEY. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act, and against the substitute of the gentleman from Pennsylvania [Mr. GOODLING], and I particularly would like to commend the outstanding efforts and leadership of both the gentleman from Michigan [Mr. FORD] and the gentleman from Missouri [Mr. CLAY] on this very, very important legislation to the rights of the American worker and basic fairness in the workplace.

How can anyone pretend there is a right to strike in America when you can lose your job the first day by the calculated decison of an employer to bring in replacement workers permanently.

Is the right to strike now analogous to the right to starve or the right to wander the streets homeless?

Opponents of this moderate, common sense, and fair legislation today have said there is a right to strike but no right to a successful strike.

This legislation, however, does not mandate a result. It does restore fairness.

This legislation will not restore the jobs of thousands who have been treated like disposable fodder. But it will prevent such travesties in the future.

As to the pending substitute, I understand and commend the gentleman and commend the gentleman from Pennsylvania [Mr. GOODLING] for his spirit of compromise and being so positive for offering this amendment, but in reality it is a strike breaking or extending amendment, not not a strike-settling provision.

Can my colleagues imagine the pressures on the union to settle in 8 weeks or get thrown overboard forever?

Vote no on Goodling, yes on H.R. 5.

□ 1450

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from New Jersey (Mrs. ROUKEMA).

Mrs. ROUKEMA. Mr. Chairman, I rise in support of the Goodling substitute as a reasonable compromise position on H.R. 5 that will not unduly burden either labor or management by creating an 8-week moratorium on hiring permanent replacements, or threatening to do so, after the beginning of an economic strike.

While I am very much opposed to H.R. 5, I believe that we are facing intractable problems in labor-management relations which can be addressed in part by the approach my colleague Congressman GOODLING takes to the issue of permanent replacement. The Goodling substitute allows the strike decision to be taken without undue pressure by the threat of permanent replacement, and in all other respects allows current law to operate after the 8-week period. This is a sound solution that offers employees real relief while keeping very much intact business' ability to operate during an economic strike.

The Goodling substitute is fair to employers and fair to business. It achieves the important goal of retaining the balance of power at the collective bargaining table, by giving protection from immediate permanent replacement while at the same time allowing business to continue operations during an economic strike after the 8-week moratorium has expired.

Both Mr. GOODLING and I have been working on solutions to the delays in adjudicating employee and employer rights at the National Labor Relations Board, and in addition the Goodling substitute includes my sense of the Congress resolution that the President should appoint a commission to reform the National Labor Relations Board. We will never make any progress in restoring balance to the collective bargaining process until we eliminate case-processing delays at the Board which are jeopardizing the integrity of the National Labor Relations Act.

These delays have done much to contribute to preceived injustices of employees in surcuring the otherwise fair and equitable remedies available under current law when such workers are permanently replaced. After careful review of this issue, I have concluded that case-processing delays at the Board—whatever their genesis—have resulted in organized labor's seeking the wholesale change in the law governing permanent replacement presented by H.R. 5. If current remedies for unfair labor practices by an employer were readily and speedily available to replaced workers, namely immediate reinstatement and back pay, I do not believe we would be facing H.R. 5 as an issue of abiding concern to organized labor.

Therefore, I believe we must shift the focus of this debate from one of overturning 53 years of settled labor law first articulated in the Mackay Radio decision and subsequent case law to solving readily apparent problems with the administration of justice under the National Labor Relations Act. We must make the current system work for employees and employers.

These delays have one result: Our labor laws do not protect the rights of employees or employers. For example, on April 23, 1991, the case of *NLRB* v. *Mountain Country Food Store, Inc.*, CA No. 90-1385, the Eighth Circuit Court of Appeals castigated the Board for extraordinary delay in processing a case and learned that the agency failed to offer any explanation for its sloth-like pace. The court termed the delay inexcusable and unfortunate, and further that enforcement of the Board's original order had become pointless and obsolete because of a delay of 7 years between the issuance of an administrative law judge's opinion in November 1982 and the Board's releasing of its own opinion in February 1989. In the meantime, noted one judge, the original handbilling dispute had become moot, since the union no longer existed, no longer represented company employees, and no longer carried any legal interest in a dispute which took place so long ago.

Several other Board decisions have been recently rejected on appeal be-

cause of inordinate delays rendering the initial dispute moot, and the Board's orders unenforceable. I want to remaind my colleagues that these are no merely dry legal cases. There are real people behind these cases—people with legitimate grievances which were lost—not to the merits of the law, but to the obdurate inability of the Board to carry out its mission to render justice where it is required. The Congress can not sit idly by while employee and employer rights continue to languish unenforced. We must get to the bottom of these problems, assign and implement solutions. The old adage, justice delayed is justice denied," has particular meaning here.

Even the General Accounting Office has studied Board case-processing delays and concluded that major changes need to be made. In its 1991 report, "Action Needed to Improve Case Processing Time at Headquarters," the GAO gave a detailed analysis of the reasons for these delays, and the types of cases most often relegated to inaction.

The report found that in 1984 through 1989 median case-processing times were generally the highest in the Board's history, with the exception of representation cases. Seventeen percent of all cases appealed to the Board took more than 2 years to be decided from 1984 through 1989. The NLRB's 33 regional offices resolve the vast majority of cases within 1 year. About 5 percent of the cases—between 900 and 1,900 annually during the 1980's—are forwarded for review to the five-member Board at NLRB headquarters. In the period between 1984 and 1989 the Board decided about 67 percent of the 5,000 cases appealed to it within 1 year from the date the case was assigned to a Board member. However, about 10 percent of the cases took from over 3 years to more than 7 years to decide.

Between 1984 and 1989, the medians for unfair labor practice cases ranged from a low of 273 days to a high of 395 days—between two and three times higher than medians in the 1970's. The median time to decide unfair labor practice cases in fiscal 1989 was 300 days. This was substantially higher than at the start of the decade. Also, 21 percent of the unfair labor practice cases decided in fiscal year 1989 had been at headquarters more than 2 years.

The GAO stated that many case-processing problems at the Board can be traced to the fact that the Board has no standard for the total length of time it considers acceptable for a contested case to be before it or for the length of time a case can remain in each decision stage before corrective action is required. In the absence of such standards, its monitoring procedures do not require Board members or their staffs to focus proactivity on cases most likely to show excessive delays unless corrective action is taken.

Another factor accounting for excessive delay is Board member turnover and vacancies. The Board had as many new members—six—during 1980 to 1984 as it had during the 1970's and more than it had during the 1960's. Five Board members were replaced during fiscal years 1980 to 1983. One newly appointed member served less than 17 months, another served less than 3 months. Turnover continued from 1985 to 1989, when six new members replaced others who were appointed from 1980 to 1984.

Contributing to these delays are inadequate funding levels for the Board. To quote from a letter to myself and other members of the Committee on Education and Labor from Board Chairman James Stephens and general counsel Jerry M. Hunter dated February 14, 1991:

> Within the level of this year's funding, we are barely meeting our casehandling workload while paying for those nondiscretionary expenses such as rent, communications, postage and other fixed costs over which we have no control. We have discontinued practically all training, virtually eliminated discretionary spending, reduced casehandling travel to a minimum, and have frozen hiring on a nationwide basis. Our progress in enhancing our automation capabilities has come to a halt and indeed, we will be unable to maintain our current capabilities due to the aging of computer, word processing and other equipment.
>
> Compounding our difficulties is the present understaffing in many of our field offices. Without adequate resources, the backlog of cases, an ongoing concern of the Congress, is building and will continue to do so to such an extent that the effectiveness of this Agency will be adversely affected. Currently, we are not able to make essential staffing adjustments among our Regional Offices by hiring employees or permitting transfers or details. Largely due to this disparate staffing, the median time to issue complaints is now three weeks longer, which exacerbates the backlog.

If relations between labor and management are to have any future at all, they must be based on the common sense foundation of a National Labor Relations Act which can be enforced fairly to protect the rights of both employers and employees. That is why the Congress passed the NLRA and why it created the Board. We must act now to put in place necessary reforms so that the Board can carry out its mission. My resolution, which is section 5 of the Goodling substitute, expresses the sense of the Congress that the President should appoint a commission to make recommendations to Congress for reform of the National Labor Relations Board including, but not limited to:

First, statutory changes to the procedures for filling vacancies of National Labor Relations Board members, and changes in the number of Board members if appropriate;

Second, changes in the number and functions of personnel at the Board;

Third, internal procedural changes within the NLRB to decrease or eliminate case-processing delays;

Fourth, appropriate increases in Federal funding for the Board and general counsel to carry out recommended reforms; and

Fifth, changes to the National Labor Relations Act which will provide expedited relief for certain complaints and actions brought under the act.

We cannot ignore the very real and pressing difficulties faced by the Board in securing for employees rightful remedies under the NLRA where the law requires. It is the very delays outlined here that have created justified frustration among unionized workers, and many employers as well. It is time to let the National Labor Relations Board—and the National Labor Relations Act—work as intended. The Goodling substitute is a common sense approach to the problem of permanent replacement and calls upon the President for reform of the NLRB. I urge my colleagues to support the Goodling substitute.

Mr. FORD of Michigan. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. Mr. Chairman, I thank the gentleman from Michigan [Mr. FORD], the chairman of our committee, and I join with him in complimenting our colleague, the gentleman from Pennsylvania [Mr. GOODLING].

During the 14 years I have had the privilege of serving with the gentleman from Pennsylvania, he has constantly sought compromise in difficult situations and provided us leadership in those situations. I agreed with him earlier today when he said that it is not fair that this should cover only unionized workers, but I know that the gentleman from Pennsylvania [Mr. GOODLING] understands that that was a compromise that we must accept when we accept and debate the Peterson amendment later in the afternoon. We will support that even though some of us believe that all workers should have the same protection whether they are unionized or not.

The fallacy in the amendment offered by the gentleman from Pennsylvania [Mr. GOODLING] is one that I think he legitimately arrived at in saying there should be a time limit in which the matter should be decided. The real problem is that if we then say the worker only has 8 weeks to determine whether he can legitimately strike or leave his place of employment or not, he will then in effect have lost his right at the end of 8 weeks.

If the gentleman would care to accept the notion that would say that at the end of 8 weeks all work would stop at the installation, the worker will not report and the plant will close, I will join him in that effort. We will then have the gun pointed at both heads,

and we would then say, "You will solve it in 8 weeks or the plant will close and you won't have any profit and you won't have any wages."

Right now it only goes one way. There will not be any wages if there is a work stoppage, but the profit seems to go on with the replacement of workers.

The basic issue we face is the worker's right to withhold his or her labor until a mutually agreed-upon contract can be achieved.

I just want to say further that in many nations of the world our capitalistic democracy neighbors have built into their constitutions the right that an employee may leave the place of employment and at the end of the work stoppage, at the end of negotiations, have that constitutional right to return. We thought in this country in 1935 that we had achieved that protection for American workers. With the advent of the Reagan administration, followed by his Vice President, Mr. Bush, as President, and the Supreme Court that they have structured, those rights under the NLRA no longer exist. This will come just part way toward restoring those rights.

Mr. Chairman, I urge the Members to vote against the Goodling amendment and vote for the legislation.

Mr. Chairman, today I rise in support of H.R. 5, the strike replacement bill. This legislation has been too long in coming, and it is certainly appropriate that we are finally addressing this issue. Over the past 50 years, and especially during the last decade, workers—exercising their legally protected right to withhold their labor when agreement cannot be reached at the bargaining table—have found that management has brought in permanent strikebreakers to take their jobs. Since the Reagan administration established an antiworker climate in 1981, employers, in the mold of Frank Lorenzo, have been promising strikebreakers that they—not the workers on strike—will have a right to the workers' jobs.

Hiring replacement workers during a strike is both unethical and unfair. I believe that this is an option that should no longer be available. I believe that H.R. 5 restores basic worker rights, and assures fairness and stability in labor-management relations through collective bargaining.

I also feel that this legislation fairly balances the concerns of business as well. For example, while H.R. 5 would make it unlawful for an employer to offer permanent employment to an individual for doing bargaining unit work during a labor dispute, it would not change the current practice of allowing employers to use temporary workers as well as managers and supervisory personnel during a strike.

America, which has always prided itself as being the most productive nation in the world, finds itself standing nearly alone when it comes to providing job protections for striking workers. In Italy and France for example, the right to strike is guaranteed by the Constitution. Walkouts represent a suspension not termination of the employment relationship. Strikers cannot be summarily dismissed or permanently replaced. We need to learn from these examples.

We have heard of instances of companies actually advertising for replacement workers before a strike has even begun, which leads me to believe that the pendulum has swung too far. Such situations leave us no other alternative but to enact this legislation.

Unfortunately, the antiunion attitudes of the 1980's have spilled into the 1990's, and continue to disrupt the collective-bargaining process. This undermines stable labor relations. Workers are intimidated into giving up a basic legal right, the right to withhold their labor. Our labor laws were designed to protect workers. Yet when striking is turned into the equivalent of giving up one's job, the balance of power between corporations and their workers is decisively tilted against the workers. For this reason, I strongly urge my colleagues to support H.R. 5.

The CHAIRMAN. The Chair will state that the gentleman from Michigan [Mr. FORD] has 18½ minutes remaining, and the gentleman from Pennsylvania [Mr. GOODLING] has 17 minutes remaining.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, today's vote on H.R. 5, the Workplace Fairness Act, is proof positive that 10 years of high testosterone, macho behavior in labor-management relations has failed. Ronald Reagan's double talk and Frank Lorenzo's scorched Earth policies left 300,000 American workers unemployed. "Replacement" is just a fancy euphemism for "fired." In either event, the workers and their families were left with no income, no health insurance, no nothing.

All the muscle flexing of get what you can management may have lined the pockets of the union busters and given management a few shortlived good headlines, but it has left Eastern Airlines in liquidation, Continental and Greyhound wallowing in bankruptcy, and the real average weekly wage of American workers falling precipitously.

Repeated concessions by labor have yielded nothing. International Paper Co. is a case in point. Though the company's profits tripled between 1986 and 1987, hitting $100 million, management ignored union concessions, including a wage freeze, and fired—oh, excuse me, permanently replaced—its 2,300 workers.

We not only need H.R. 5 but a whole new attitude in labor-management relations, in which teamwork and investing in long-term productivity replace self-destructive union busting. Cooperation has proven results. According to a 1986 study, at unionized companies that promoted teamwork, employee productivity increased 19 percent, while at companies that fought or ousted their unions, productivity fell by 15 percent.

Union busting not only destroys employee morale, it harms the bottom line, profits. The New York Daily News, for example, spent $24 million preparing for a totally destructive strike. American management needs to take another lesson from the Japanese. When they bought Firestone Tire & Rubber Co. in 1988, the new Japanese management invited labor to the bargaining table, because they saw labor as a value, not a threat. Today we can restore workplace fairness and invest in our Nation's labor force by voting for H.R. 5.

□ 1500

Mr. Chairman, I would like to ask the gentleman from Michigan [Mr. FORD] a question, because we have heard many Members come down here and say if we pass H.R. 5, we are not doing a thing for American workers that German workers, European workers, Canadian workers, and all sorts of others do not have.

But even Japanese, as well as others, have this not just in the law, but in their Constitution. My understanding is the gentleman from Michigan [Mr. FORD] knows something about that. Is that true vis-a-vis Japanese workers?

Mr. FORD of Michigan. Mr. Chairman, I was informed by a person who served on General MacArthur's staff that they wrote it into the Japanese Constitution because they believed they were going to make labor-management relations in Japan exactly as they perceived them to be in the United States of America, and that is how they froze it in place. It was General MacArthur who did this, and I am certain that every Member remembers him with affection and awe.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Michigan [Mr. FORD]. I hope everybody does what General MacArthur would want them to do, and that is at least have the equal rights for American workers that he gave Japanese workers. It will be very ironic if we vote down H.R. 5, and they cannot even have a law for things that General MacArthur gave constitutional rights to the Japanese for.

Mr. GOODLING. Mr. Chairman, I yield 30 seconds to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I would like to make some clarification of the statements that were just made in prior statements, where Members continually try to make the parallel between our labor union laws and others as though striker replacement is the only distinction.

Mr. Chairman, that, of course, is not true. In Japan you have essentially company unions. They have an entirely different system than we have. There is no relationship to their striker replacement provisions with respect to our law.

Germany we could go into. Sure, they do not have striker replacement, but they also have all kinds of limita-

tions. The Netherlands, France, all of those countries have very onerous restrictions on labor unions that we would not tolerate in this country.

Mr. GOODLING. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I agree with what was just said. In Japan, for instance, you are talking about the difference between onions and peaches. You are not even talking about the difference between oranges and apples. Labor does not have much say as individual laborers. If they want to move a plant because they say the plant is not productive here, or we do not need it there so we are going to move it there, collectively they do that. They know that from day one.

I would like to respond to the gentleman from Pennsylvania that the purpose of the 8 weeks, they have already been negotiating now for a year, 6 months, 4 months. They have already been doing all of this negotiating. What I am saying is in that 8-week period now you are down to the point where you had better crack it quickly, you had better really get to it, and stop playing games.

Nobody can afford to hire permanent replacement workers and survive. All of the companies we talked about are good examples; you cannot do it. You spend thousands and thousands of dollars to prepare your workers, so you cannot do it.

The extra 8 weeks says after all that negotiating you did and playing around, now you had better get to it, folks, and come up with an agreement that both sides can handle.

Mr. Chairman, I yield 3½ minutes to the gentleman from Wisconsin [Mr. GUNDERSON], a member of the committee.

Mr. GUNDERSON. Mr. Chairman, let me join everybody in commending our good friend from Pennsylvania [Mr. GOODLING] for his work on this bill. Let me go further than that and commend members on the other side. I think we all understand that the emotions are not going to get too high today, because frankly today is dues day. Everybody is paying their union dues. That is what this is all about here, and we ought to understand that and go forward.

The reason I asked unanimous consent to read from a printed document is, "Showdown for Labor in the House" from this morning's Washington Post:

> At the Communications Workers of America Convention in San Francisco last month, delegates voted to prohibit the union from endorsing or contributing next year to any Congressional incumbent who did not embrace legislation to ban the use of permanent replacement workers in strikes.

Mr. Chairman, let us understand exactly what we are doing here today. We are here today because this is part of the 1992 campaign, and my friends on this side of the aisle have some obligations. We are all big enough to understand exactly that is why we are here.

I have to say as one of those who considers himself a moderate Republican, a number of Members on our side of the aisle met with organized labor on this issue, and we said, "Can we work out some kind of a middle ground?" They said, "Frankly, we can't now. Probably sometime in the future we can, but that is not the purpose of this bill here this afternoon."

Mr. Chairman, we talk about the fact that we are here to protect jobs. I would suggest if our real interest was in jobs, we would understand that this is the legislative equivalent of a luxury tax, and, instead of keeping jobs in this country, it is going to transfer them to other countries.

Mr. Chairman, if I knew this was coming, I would have voted against fast track. You are darn right, because with this in place, everybody in the South is going to move their plant over the border so they have some flexibility. Second, if we were really interested in jobs, we would talk about solving the recession, not passing this kind of legislation. Third, if we were really interested in jobs, we on the Committee on Education and Labor would have up today not this bill. We would have revisions of the Job Training Partnership Act, or the chairman's Higher Education Act, and do a whole bunch of new things for the nontraditional students, those adults that need to come back and get training so they can keep their jobs.

Is there a problem? Yes, there is a problem. I agree with my Democratic colleagues on that. In the era of hostile takeovers, let us understand, even if it is 4 percent of all the strikes that occur, there is a problem when you have the Lorenzos of the world coming in, not bargaining in good faith, with the pure intent of trying to cause a strike so they can immediately eliminate that union, eliminate that collective bargaining agreement, eliminate those employees, and hire lower paid people. I agree with that.

But the problem is, H.R. 5 is not the solution. If you want a solution, the solution is the substitute.

Mr. Chairman, I have to tell Members, I am amazed. Members get up and say that the substitute is bad because it is going to keep a strike in place for 8 weeks, so you do not want an 8-week cooling off period. Wait a minute. Are you going to tell me that every one of these strikes, that is so adamant, with both sides entrenched in their positions, they are going to fire the whole kit and caboodle of employees, that an 8-week cooling off period is going to extend the strike? Wait a minute. It is one or the other. Either the strike does not have significant differences and it is going to be solved, or you have got a big problem, and you need this cooling off period.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I am in strong support of H.R. 5 and in opposition to the Goodling amendment. Let us be honest and briefly discuss what has been happening in the workplace in America in the last 20 years. Let us be honest and acknowledge that anybody who talks about current conditions being a level playing field, a level playing field, is dead wrong.

What in fact is happening? All of America knows what is happening. The average American today, the average American worker has seen a significant decline in his or her standard of living. We have seen millions of jobs leave the United States, good jobs, to go to the Third World, so that employers can pay workers there $5 an hour.

Meanwhile, while the American worker becomes poorer, the chief executive officer is getting $5 million a year, is getting $10 million a year. We are talking about a gap between the incomes of chief executive officers of corporations and American workers larger than any other industrialized country in the world. Is that a level playing field?

Mr. Chairman, what in fact we are talking about is economic power. Anybody with any sense understands that more and more power rests with the rich and the large corporations, and less and less power rests with the average American worker. What does the right to strike mean, if in fact you go out on strike and your boss takes your job and replaces you with a permanent replacement? What does the right to strike mean in that situation?

Mr. Chairman, what we are talking about is employers telling workers, "Listen, this is what you are going to get in your next contract. Take it or leave it. If you go out on strike, you are going to lose your job."

Mr. Chairman, we are talking about fairness here. Let us support H.R. 5.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentlewoman from Indiana [Ms. LONG].

□ 1510

Ms. LONG. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I am a cosponsor of this bill because I believe that some legislation in this regard should become law. I will vote in favor of H.R. 5 because I want a bill to become law. But this bill will not become law in its current form. It will not become law because it is not a compromise which addresses legitimate concerns of the business community.

While the very large majority of employers treat employees fairly, I am convinced that too many employers—and the number appears to be increas-

ing—have taken advantage of middle-income workers and their families over the course of the last decade by hiring permanent replacements in order to avoid good faith negotiations. Much of the evidence is clear on this point, and as many of my colleagues are aware, the GAO concluded in a report released earlier this year that while there were fewer strikes during the 1980's as compared to the 1970's, there were, in fact, more instances where employers hired permanent replacement workers during the 1980's.

I am also convinced that for us to be considering legislation to restrict the hiring of permanent replacement workers is totally appropriate and that it is possible to fashion a workable law which will not adversely affect businesses or the economy of our country. My colleagues might be interested in the fact that Germany, France, Italy, Sweden, and Canada—to name a few countries—all have laws on their books to restrict the hiring of permanent replacement workers. And all of these countries have higher average wages for workers than does the United States.

But the solution we come up with must be workable for employers and employees. The bill before us—in its current form—is not such a measure. The Goodling substitute is not such a measure either—and while the 8-week provision in the substitute has some merit, that provision alone is not the solution. Rather, binding arbitration provisions are a more reasonable approach. And to be honest, I have been soliciting the views of the business community in Indiana and to date, I am not aware of a workable measure for employers and employees.

A compromise bill, in my opinion, should encourage good faith negotiation on the part of business, but should not give labor unions an upper hand, as many contend this bill—in its current form—would allow.

One approach that would go a long way toward achieving this goal is to provide for a date certain when employers could—under certain circumstances—here permanent replacement workers. Such a deadline should be provided to encourage negotiations, but we should realize that a deadline in and of itself is not enough. Passing such a deadline should not automatically give employers or employees an advantage, but should only intensify the negotiating process by requiring that the parties enter into binding arbitration to resolve outstanding differences.

Unfortuantely, the bill before the House today is not a workable compromise and it will not become law. This bill is, however, a vehicle on which the Congress and the administration can work. I hope this will happen during the coming months.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. Mr. Chairman, first of all, a number of people on the other side of the aisle have said that somehow H.R. 5 is necessary to preserve the right to strike. Nothing is further from the truth. The right to strike remains.

Now, if there is a problem, as the gentleman from Wisconsin mentioned just a few moments ago, it may be in a hostile takeover the new reorganization seeks to get rid of the unions and if workers go out on strike they are immediately replaced or nearly immediately replaced by replacement workers who are permanent. How do we address that problem?

If it is 4 percent of strikers who are actually affected, how do we deal with the 4 percent with a rifle rather than with a blunderbuss or a nuclear weapon?

The Goodling substitute does that. It gives 8 weeks after all the negotiations have failed and workers go out on strike, it gives 8 weeks prior to the ability of an employer to hire permanent replacement workers. So those workers hired during the 8 weeks, they must be let go by law if Goodling is made into law. That solves the problem. It is a narrow approach to what may be a narrow problem.

It does not change 50 years of labor law. It is fair. It is a compromise. Why can we not compromise on this? Why does it have to be all or nothing at all?

I ask my colleagues on the other side of the aisle, is not a vote for Goodling, knowing that the administration is going to veto this bill, is not a vote for Goodling a chance to get something passed rather than nothing?

Thank you, Mr. Chairman. I rise in support of the substitute offered by my colleague from Pennsylvania, Mr. GOODLING. He is to be commended for this fine legislative effort. This proposal is a carefully crafted, precisely targeted measure aimed at preventing genuine abuses of our generally sound labor laws. and unlike H.R. 5, this substitute is structured not to endanger, but to enhance, the crucial balance of deterrence and incentives that encourage labor and management to resort to strikes only as an absolutely last resort in the collective bargaining process.

How does Mr. GOODLING's substitute do this? First, by preventing an abusive employer from jumping the gun and terminating good faith bargaining through premature use of replacement workers. The substitute prohibits hiring or threatening to hire replacement workers during the first 8 weeks of an economic strike.

Second, the Goodling substitute extends the period in which even replaced workers may vote in union elections—from the current 12 to 18 months, thus making it much more difficult for an employer to use replacements as a means of voting out a union as the employees' collective bargaining representative.

Third, the substitute makes it a condition of a lawful economic strike that the employees authorize through a secret ballot—a right not conferred by existing law. This enhances industrial democracy by giving employees the right to determine the course of their union in a strike situation, without fear of intimidation or retribution.

This is already law in Great Britain.

Finally, the Goodling substitute would make strikes involving the use of replacements the top priority on the docket of the National Labor Relations Board, the agency charged with overseeing the proper administration of the Federal labor laws.

This measure, Mr. Chairman, represents good legislative craftsmanship—a thoughtful, carefully analyzed answer to the few abuses that may affect the 4 percent of striking workers who are actually replaced by their employers. It contrasts sharply with the massive impact of H.R. 5 as reported. I urge that the House adopt the Goodling substitute as the best of both worlds—protection for striking workers where it is needed, without needless overkill that would harm the essential balance of incentives that has made American collective bargaining so successful. Let's protect the right to strike—a precious feature of any true democracy—but not by undermining the very system of labor-management negotiation that is absolutely essential to successful, competitive American industries. American workers, American industries, and the American economy deserve better; and if we adopt the Goodling substitute, they will get it.

Mr. FORD of Michigan. Mr. Chairman, I yield 3 minutes to the gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Chairman, I rise in opposition to the Goodling amendment and in support of H.R. 5. This is a bad amendment to a good bill. I thank the chairman of our committee, the distinguished gentleman from Michigan, for bringing this before the House today.

Today we Members of this House of Representatives are representing the hard-working American families in our districts.

Today this House decides whether to protect the jobs of workers who are striking for wages to support their families, for health care or for other economic conditions. H.R. 5, the Worker Fairness Act, prevents companies from hiring permanent replacements when their own employees are out on legitimate strikes.

The struggle of organized labor is very much a part of the history of this country—brave men and women fighting for decent wages, decent working

conditions, and decent benefits for them and their families. Greedy corporations resorted to strikebreaking and sometimes violence. Many of these gallant men and women gave their lives for their union brothers and sisters.

Because of their efforts, since 1935 under the National Labor Relations Act, organized labor has had the fundamental rights to organize, to bargain collectively, and to strike if necessary. This act, also known as the Wagner Act, made it illegal for companies to interfere with these rights, including the right to strike. An obscure Supreme Court decision in 1938 provided a loophole, however, for companies intent on union busting. The loophole wasn't really used until the Reagan-Bush years when a full-scale attack began on American workers.

The Worker Fairness Act is important to those hard-working Americans. It restores a fair and equitable balance between labor and management.

A strike is the ultimate tool for workers in collective bargaining, and only used in a last resort when negotiations have totally broken down. It is designed to place an equal hardship on management and labor: Management loses profits and the workers lose their wages. This should provide an incentive for both parties to go to the bargaining table.

But this balance becomes an imbalance when a company can effectively cease negotiations and then end a strike by hiring permanent replacement workers. This is a hollow choice for workers: "Keep your job on the company's terms—or lose it on the company's terms." America's workers deserve better.

Today, let us—the representatives of the people—let us truly represent the people. Let us stand up for workers and oppose the Goodling amendment. Let us stand up for the Worker Fairness Act.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. KLUG], a member of the committee.

Mr. KLUG. Mr. Chairman, I rise in support of the Goodling substitute to H.R. 5.

I think it is clear, Mr. Chairman, that there have been identifiable abuses, by employers, of their legal right to hire replacement workers during economic strikes. The plain truth, however, is that these abuses have been exceptions to the rule rather that the rule itself.

In fact, Mr. Chairman, there is no evidence to suggest that these cases where permanent replacement workers are involved is either the beginning or the continuation of a trend. The number of major labor strikes has dramatically declined over the last decade and the number of striking workers who have been replaced has not increased. In reality, the number of striking workers who have been permanently replaced under the Mackay statute has actually declined.

H.R. 5 is an overblown and potentially counterproductive response to the problem. Rather than the fairness which the authors and supporters of this legislation claim as their objective, I believe that this legislation will instead undermine an equitable balance in the collective bargaining process and, in the long run, foment increased labor-management conflict and economically costly strikes.

The ranking member of the Education and Labor Committee, Mr. GOODLING, has offered a proposal which is a far better response to the actual problem. It would put in place a moratorium on the right to hire permanent replacement workers which would protect striking workers without at the same time stripping employers of all power at the bargaining table. It also calls for much needed reform of the case processing standards of the National Labor Relations Board. I know from an experience very close to home that such reform is essential.

Average case processing times have been at the highest level they've been in the NLRB's history, with almost 20 percent of cases being appealed taking 2 years to be decided. These delays have presented major problems in adjudicating the rights of workers involved in strike activities. In my own district, in the town of Stoughton, it took the NLRB more than a year to finally rule in favor of the claims made by striking workers. For the men and women that had to live without a paycheck during that period it proved a very hollow victory.

Mr. Chairman, the Goodling substitute offers an opportunity to farily and reasonably address issues which need to be addressed. It maintains the very critical and long valued balance between workers and employers in the collective bargaining process while at the same time mitigating against the abuses which have spurred this debate. It creates a legal environment in which both employees and employers would have the strongest incentives possible to bargain reasonably and in good faith. H.R. 5 is not consistent with either of these aims and for that reason I urge my colleagues to support the Goodling substitute and to reject H.R. 5.

□ 1520

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Chairman, today we are considering a bill that stands at the very core of this Nation's democratic values: equality and fairness.

The last 10 years have seen the fair balance between labor and management shift in favor of management due to the proliferation of replacement workers.

There have been all kinds of examples given here today, Mr. Chairman, and let us take the Washington Post that was just mentioned where they managed to kick out their pressmen, where they turned one set of workers against another. Let us just take a look at what it says here. "CEO's," and that is the chief executive officers, "get a bigger piece of the pie. Average pay for top executives in 60 area companies nearly $700,000 in 1990." In the very same paper, right here in your Metro section, all you have to do is look in Maryland and look in Virginia, and you do not have to look any further than just outside the precincts of this capital, in the suburbs, "More driven to the streets. Area recession increasing evictions of the employed."

Some people have implied on this floor that people who are employed now cannot wait to go on strike. There are ads being taken out against this bill that say it is the striker breeder bill as if workers are a nest of mosquitoes, as if it is a kind of cancer that wants to spread, as if the people who are employed right now who have lost net wages over the past 10 years wanted to go on strike, and at the same time opponents of these measures have said that people are not going on strike as much as they had before even though it is for economic purposes; it is because people have been intimidated, because they have been made afraid.

This is an opportunity for Democrats and those Republicans who would like to join them to bring fairness and equity back into the workplace. This is the time for the Democrats in this House to make a statement that they are on the side of working families all across this country and to draw the line today.

Who is on your side? Who is standing up for your family? It is this bill. Vote for it if you want to vote for working American families.

Mr. Chairman, today we are considering a bill that stands at the very core of this Nation's democratic values—equality and fairness—the entire collective-bargaining system established by the National Labor Relations Act of 1935 and the Railway Labor Act of 1928 was based on the premise of providing fairness and equality in the collective-bargaining process. But, Mr. Chairman, that is no longer the case.

The last 10 years have seen the fair balance between labor and management shift in favor of management due to the proliferation of replacement workers. This certainly was not the original intent of our labor laws, but is an unnatural result caused by a President who went so far as to fire thousands of striking air traffic controllers. Thus, Mr. Chairman, because of this precedent there has been a huge increase in the number of workers being permanently replaced while exercising their

collective-bargaining rights. Is it fair Mr. Chairman? I say it is not.

Mr. Chairman, every Member in this Chamber would like to see labor disputes settled at the bargaining table. But, how, Mr. Chairman, can we expect both labor and managment to negotiate in good faith if the conditions of the debate are not neutral. In order to settle labor/management conflicts we must give unions the capability to approach the table on an equal footing. It is only fair, Mr. Chairman, that the labor unions of this country need the right and authority to call an economic strike, or the collective-bargaining process will never be fair and equal.

The problem is, Mr. Chairman, that the workers of this country are struggling to maintain the basic standard of living acheived through 50 years of fair labor negotiations. The laborers of Hawaii's hotel industry do not work for corporations that will provide their families with maternity leave, nor do they work for corporations that will give them family medical leave or protect them from hiring discrimination; the loggers of Washington State do not work for companies that will allow them decent pension benefits; the meat packers of Iowa do not work for businesses that will provide them with day care. The coal miners of West Virginia do not have six-figure litigators on their payroll to protect them from unsafe working conditions; the steel mill workers of Pennsylvania do not have $100,000 per year lobbyists who provide management with tax breaks, and loopholes in the occupational health and safety regulations, and the air traffic controllers of this country only wished they had an administration in the White House that would have respected their collective-bargaining rights and recognized the professionalism required in air traffic control. It is apparent, Mr. Chairman, that there is no balance, and there will never be a real balance as long as striking workers are being permanently replaced.

The only thing that the workers of this country have is a Congress that can empower them with the tools to bargaining collectively. Let's not take these fundamental rights away. Mr. Chairman, if we continue to tie the hands of the working men and women of this country, they will never get a fair shake.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes, 15 seconds, to the gentleman from Pennslyvania [Mr. WELDON].

Mr. WELDON. Mr. Chairman, I rise today in support of the amendment being offered by my distinguished colleague from Pennsylvania. He is to be commended for working in a positive, constructive way to address serious permanent and real problems in the current state of labor-management relations.

The major component of Mr. GOODLING's substitute provides a temporary moratorium on the hiring of permanent replacement workers. There can be no question that this will help protect union members engaged in a strike and will encourage both sides to reach swift agreement on issues in dispute.

Unfortunately, the use of permanent replacement workers clouds the collective-bargaining process. Even if an employer does not use them, unions are constantly under the Sword of Damocles. The fear of permanent replacement is ever-present. And as long as the threat of permanent replacement exists, the collective-bargaining process is tainted.

An extremely important, but easily overlooked, component of the Goodling substitute is a provision urging swift resolution of unfair labor practice cases at the National Labor Relations Board. According to a January 1991 GAO report, it took more than 2 years to resolve 21 percent of unfair labor practice claims. Further, the median time taken to close such cases in the period 1984 to 1989 was two to three times longer than a decade before. When businesses engage in unfair labor practices, workers are compelled to go on strike to protect themselves. Unfortunately, slow disposition of these cases renders virtually meaningless the protections afforded by the NLRA.

Finally, Mr. Chairman, I would note that the administration now understands the importance of this issue. Last year, my colleagues TOM RIDGE, AMO HOUGHTON, and I were unable to secure a meeting with then Secretary of Labor Dole to discuss the issue. This year, we have met with both Secretary Martin and President Bush. The President is sincerely concerned about this problem and was interested in finding a fair way to protect the jobs of workers who exercise their legal right to strike. We ought to be working with him, rather than against him.

Mr. Chairman, a vote in favor of the Goodling substitute is a vote for a positive compromise. Let us put aside the political gamesmanship and partisan politics. Let us work together to find a solution to this problem which provides real protections to working men and women without handcuffing American businesses.

Mr. Chairman, as written, H.R. 5 is not going to be enacted into law. Let us put aside that vehicle and work toward passage of legislation that will not be met by the President's veto pen.

Mr. FORD of Michigan. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, much has been said by Members on that side who apparently are conferring with somebody in the White House about the fact that H.R. 5 would not be signed by the President. The implication being that if H.R. 5 was amended by Goodling it would.

Unfortunately, I have a letter dated July 15 from Lynn Martin, Secretary of Labor, saying unequivocally that the President was going to veto, or would be advised to veto, legislation of this kind, and then saying union-only limitations and moratorium amendments, in other words, the Goodling amendment, would not change the thrust of H.R. 5 or diminish the administration's objections to this bill.

So if Members are looking for a way to get the President to sign it, the Goodling amendment is not that way.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I am happy to yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, I want to make sure the gentleman does not believe that I believe the President would sign the bill because of my substitute. However, there is another process, you know; there is a veto, and there are a certain number of votes needed to override, and a certain number of votes needed to sustain, and that may be the difference.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, let me just begin by saying that the notion that because the President says he is going to veto something we should, therefore, not contemplate doing it misreads the Constitution of the United States. The veto was never meant to be a magic wand. The veto is a very solemn instrument that, if the President after full debate decides he wants to take the reponsibility to veto a bill, that is his right, but if you allow the President simply by saying the word "veto" to dissolve the legislative process early, you have distorted what legislative-executive relations are supposed to be, and distortion of relations is why we are here.

This legislation would not have been thought of, and certainly would not have come forward, if it had not been for the radicalization of the National Labor Relations Board during the 1980's.

We have had periods in American history when Republican Presidents have appointed Board members who have moved in one direction and Democratic Presidents who have moved in another direction, and then we had 1981 and the Reagan years. We had, and I can say this in my capacity as a former chairman of the subcommittee over the NLRB jurisdiction and government operations, the NLRB shut down for working people, and an ideological set of appointments were made during the Reagan years which simply denied working people the benefits of the National Labor Relations Act.

People who now urge on workers to be conciliatory, to work this out, to find other ways should have been there in 1983 and 1984 and 1985 when people were fired for simply trying to exercise their collective-bargaining rights under the National Labor Relations Act and got no practical relief whatsoever, because the National Labor Relations Board, the entity that was charged with enforcing the National Labor Relations Act and the rights of working men and women, simply shut down to them for ideological reasons.

There have been a series of very substantial erosions in the ability of working people to get a fair share.

□ 1330

One of the precipitating events is what happened at the NLRB. We are here today, in part, because of that. Strikes which had begun to diminish in the eyes of some, came back, and that, now, is a balance that must be righted.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Chairman, I rise to commend my colleagues from Pennsylvania for having the courage to begin the dialog that is absolutely essential to finding a solution to the problems that lie behind H.R. 5. I am deeply anguished by the hardship that has been imposed on some of our Nation's work force by a few irresponsible employers, who have approached the bargaining table in bad faith.

The real message behind H.R. 5 is the need to reform the National Labor Relations Board process to speed up decisions when good-faith bargaining is in question. Prompt action by the NLRB would have protected those hundreds of families that suffered for years at the hands of the old Colt management in Connecticut, which refused to bargain in good faith. Ultimately, the strikers received back pay and reinstatement under current law, but the price paid by those families was intolerable. One-half of the 4 percent of strikes involving permanent replacements were ruled unfair-labor-practice strikes by the NLRB and the workers awarded back pay and full reinstatement. However, the human price is too high. The law owes people swifter justice.

We need reform, but H.R. 5 will cost jobs, not secure jobs. In today's difficult economic times, more companies, when faced with the stark choice between a contract settlement they cannot afford and a strike that will shut them down, will simply close or move abroad. They will do so because they are competing in an international marketplace, and as part of a more interdependent business community, where failure to honor just-in-time delivery commitments is terminal. Strikes are more lethal in less time today than ever before. That means the choice between an unaffordable settlement and a long strike will more often lead to closure or relocation. Job loss, not job gain.

We should recall the experience we had with the ABC child-care bill, a bill originally drafted by interest groups, and dropped into our process for several years. They were intransigent. They said we could not negotiate. We cannot work our will, and we had no child-care policy.

We are facing that same situation today. We need for H.R. 5 to be part of a larger debate, as my colleague from Pennsylvania has tried to do, to bring it into a broad arena. We need NLRB reform. We need to prevent the retraining of replacement workers.

There are a number of solutions that we need, and this amendment starts that process.

Mr. FORD of Michigan. Mr. Chairman, I understand that the gentleman from Pennsylvania will close, since he is the proponent of this amendment, is that correct?

The CHAIRMAN. The gentleman from Pennsylvania has 2¼ minutes remaining, and the gentleman from Michigan [Mr. FORD] has 3½ minutes remaining.

Mr. FORD of Michigan. Mr. Chairman, I yield 2 minutes to the great fighter for the American working man, the gentleman from Michigan [Mr. HERTEL].

Mr. HERTEL. Mr. Chairman, I grew up on the east side of Detroit. At the age of 7, I knew what a recession was.

I knew, and today I know many people laid off permanently. I have been in their living rooms and talked to them about it, and what it does to their families. No one in my neighborhood talked about taking somebody else's job. That is what this issue is about. There is nothing worse than losing your job, or fearing losing your job.

Many on the minority side talk about families, and their concern for families. What is worse than a family losing their livelihood? There is nothign worse than that. That is what this issue is here today.

Ironically, many people in the House did not want to vote on this controversial issue; they think it is controversial. I think it is one of human rights. Why? Because they were afraid of the next election, afraid of losing their job. How tragic. Stand up for the American people. Let Members protect American jobs. Let Americans pass this bill, and let Members talk about what we should be doing. After we take care of the people that have jobs today, let Members talk about creating jobs.

I do not hear any person on the other side talking about new jobs and creating new jobs, but talking about taking away jobs. We will win this fight, because we are on the right side of the American people.

Mr. FORD of Michigan. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, I rise in opposition to the Goodling amendment.

Mr. Chairman, I rise in opposition to the substitute amendment. Let me begin by commending the gentleman, as well as another gentleman from Pennsylvania, Mr. RIDGE, for their efforts with regard to the issue. If we do not yet agree on a solution, we nevertheless share a recognition of the problem and a common desire to address it. Both Mr. GOODLING and Mr. RIDGE have proposed substantive changes in law that would make definite improvements on the status quo. Neither, however, has proposed corrective changes that ensure American workers the protection to which they should be entitled. Nor have they offered a compelling reason why American workers should settle for less than they deserve.

The substitute amendment now before us provides that an employer may not hire permanent replacements for 8 weeks. In my view, an employer should not be able to offer permanent status to any employee so long as the striker retains employee status. Limiting the protection of H.R. 5 to an 8-week period will still encourage some employers to promote strikes as a means of terminating bargaining relationships. There is no good reason for supporting a provision that gives American workers substantially less protection than that enjoyed by Canadian, German, Japanese, French, Dutch, or Polish employees with whom they must increasingly compete.

The substitute amendment calls for the NLRB to give priority to unfair-labor-practice charges affecting the status of striking workers. I believe that the gentleman from Pennsylvania has identified one of the more significant weaknesses in current law. As a practical matter, for many workers, it makes little difference whether a strike is an unfair-labor-practice strike or an economic strike. While the union may promptly file charges to seek redress for unfair labor practices on the part of the employer, in too many instances it will be years before those charges are finally litigated and a determination is made as to whether the employees are economic strikers or victims of employer misconduct. In the meantime, though the need to provide a livelihood for their families does not diminish, the employees remain exiled from their job—without their regular income. Even if the employees eventually prevail, they are not fairly compensated for the damage done.

Under the NLRA, they are entitled to such wages as they would have otherwise received minus anything they have managed to earn or should have managed to earn in the interim. Yet, the employee has undergone a prolonged period of unemployment and suffered all the damage that entails. Normal family expenditures have been altered. Goods or services the family would have otherwise purchased have been forgone. In some cases, cars and homes have been repossessed and medical treatment has been postponed to that individual's detriment. Despite the fact that all of these deprivations may have been visited upon the employee because of the employer's violation of the law, the employee is not entitled to and does not receive remuneration. Much has been made by opponents of this legislation of the fact that Colt Industries paid back wages in the millions of dollars as a result of an unfair-labor-practice strike. What the opponents fail to point out is that the employees who were the victims of that employer not only would otherwise have earned every penny of that money and more, but suffered real losses that doubled or tripled their back-pay award.

Mr. GOODLING, having recognized this problem, proposes to deal with it by encouraging the Labor Board to expedite ULP charges af-

fecting the status of strikers. As one who served for 7 years as chairman of the subcommittee with direct oversight for the Labor Board, let me say that the Board has been repeatedly and consistently urged to expedite such charges. In fact, beyond the problem of the Board itself, it is the structure of the judicial system that produces the delays. The solution that Mr. GOODLING proposes is no solution at all.

H.R. 5 does not increase financial liabilities to employers, nor does it increase compensation to employees. There are no provisions for punitive damages, nor is there any language addressing Board or court procedures. But, by eliminating the ability of employers to use strikes as a means of busting the union, H.R. 5 more effectively addresses the problem of ULP strikes than Mr. GOODLING's substitute.

I urge my colleagues to listen to the anger and frustration of our constituents. They deserve more than qualified, half-hearted and ineffective remedies. They deserve real solutions to the inequitable and unjust real problems they face. H.R. 5 provides those solutions. Regrettably, the Goodling substitute does not. I urge my colleagues to reject this amendment.

Mr. FORD of Michigan. Mr. Chairman, I have no further requests for time.

Mr. Chairman, I ask unanimous consent that my remaining time be transferred to the gentleman from Florida [Mr. PETERSON] for his time on his amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GOODLING] is recognized to close debate on this amendment.

Mr. GOODLING. Mr. Chairman, I yield my remaining 2¼ minutes to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Chairman, I rise in strong support of the substitute. The committee bill takes Members to a brink of the major change in American labor law.

What does it risk? There has been a lot of talk about comparison of other European states that have different labor law relative to the replacement of striking workers. What happened in Canada when we took a similar step? Listen to Morley Gunderson in his book, "The Effects of Canadian Labor Relations Legislation on Strike Incidence and Duration": "is associated with statistically significant and quantitatively large increases in both strike incidence and duration and tense overall strike activity."

What is ironic, Mr. Gunderson points out, that bill is introduced with the intent to heal labor-management disputes, rather than to exacerbate them.

What is also of interest is that Canadian legislation is not an unlimited, unended right to having an unqualified right to reclaim your job in an economic strike. It is limited to 6 months. In fact, it even requires that there be votes for the strike.

In other words, even with the Canadian law, which mirrors very much what the gentleman from Pennsylvania [Mr. GOODLING] strives to do, the intentions were not fully met, and there were very, very serious risks being undertaken. What the gentleman from Pennsylvania [Mr. GOODLING] is trying to do is to respond to the concerns of labor, while, at the same time, put some hedges on the risks that we are undertaking.

Let me make clear one more time for the RECORD, because of the confusion and some of the misunderstandings on the issue. Existing law, existing law gives an absolute, unqualified right to reclaim a job, to reinstatement of a job, when a worker has been a victim of an unfair labor practice, and management's attempt to break a union and not engage in good faith collective bargaining is regarded, under law, as an unfair practice.

What is at dispute is the right of labor to have an unqualified right to reinstatement of a job when he or she goes on strike, over economic dispute. The committee bill puts management in a terrible dilemma, once that is given. The only way in which management can escape that dilemma is either to capitulate, without question, to the group demands, or else to eliminate the job, and eliminating a job does not help the worker we seek to protect.

I urge support for the substitute.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Pennsylvania [Mr. GOODLING] as a substitute for the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. PETERSON].

The question was taken; and the Chairman announced that the noes appeared to have it.

The vote was taken by electronic device, and there were—ayes 28, noes 399, not voting 6, as follows:

[Roll No. 211]

AYES—28

Bentley	Hobson	Ritter
Callahan	Houghton	Roukema
Chandler	Johnson (CT)	Schiff
Clinger	Klug	Shays
Coleman (MO)	Machtley	Snowe
Duncan	Mazzoli	Walsh
Goodling	Meyers	Weldon
Grandy	Miller (OH)	Young (AK)
Gunderson	Pursell	
Henry	Regula	

NOES—399

Abercrombie	Aspin	Berman
Ackerman	Atkins	Bevill
Alexander	AuCoin	Bilbray
Allard	Bacchus	Bilirakis
Anderson	Baker	Bliley
Andrews (ME)	Ballenger	Boehlert
Andrews (NJ)	Barnard	Boehner
Andrews (TX)	Barrett	Bonior
Annunzio	Barton	Borski
Anthony	Bateman	Boucher
Applegate	Beilenson	Boxer
Archer	Bennett	Brewster
Armey	Bereuter	Brooks
Broomfield	Gordon	McMillen (MD)
Browder	Goss	McNulty
Brown	Gradison	Mfume
Bruce	Green	Miller (CA)
Bryant	Guarini	Miller (WA)
Bunning	Hall (OH)	Mineta
Burton	Hall (TX)	Mink
Bustamante	Hamilton	Moakley
Byron	Hammerschmidt	Molinari
Camp	Hancock	Mollohan
Campbell (CA)	Hansen	Montgomery
Campbell (CO)	Harris	Moody
Cardin	Hastert	Moorhead
Carper	Hatcher	Moran
Carr	Hayes (IL)	Morella
Chapman	Hayes (LA)	Morrison
Clay	Hefley	Mrazek
Clement	Hefner	Murphy
Coble	Herger	Murtha
Coleman (TX)	Hertel	Myers
Collins (IL)	Hoagland	Nagle
Collins (MI)	Hochbrueckner	Natcher
Combest	Holloway	Neal (MA)
Condit	Hopkins	Neal (NC)
Conyers	Horn	Nichols
Cooper	Horton	Nowak
Costello	Hoyer	Nussle
Coughlin	Hubbard	Oakar
Cox (CA)	Huckaby	Oberstar
Cox (IL)	Hughes	Obey
Coyne	Hunter	Olin
Cramer	Hutto	Olver
Crane	Hyde	Ortiz
Cunningham	Inhofe	Orton
Dannemeyer	Ireland	Owens (NY)
Darden	Jacobs	Owens (UT)
Davis	James	Oxley
de la Garza	Jefferson	Packard
DeFazio	Jenkins	Pallone
DeLauro	Johnson (SD)	Panetta
DeLay	Johnson (TX)	Parker
Dellums	Johnston	Patterson
Derrick	Jones (GA)	Paxon
Dickinson	Jones (NC)	Payne (NJ)
Dicks	Jontz	Payne (VA)
Dingell	Kanjorski	Pease
Dixon	Kaptur	Pelosi
Donnelly	Kasich	Penny
Dooley	Kennedy	Perkins
Doolittle	Kennelly	Peterson (FL)
Dorgan (ND)	Kildee	Peterson (MN)
Dornan (CA)	Kolbe	Petri
Downey	Kolter	Pickett
Dreier	Kopetski	Pickle
Durbin	Kostmayer	Porter
Dwyer	Kyl	Poshard
Dymally	LaFalce	Price
Early	Lagomarsino	Quillen
Eckart	Lancaster	Rahall
Edwards (CA)	Lantos	Ramstad
Edwards (OK)	LaRocco	Rangel
Edwards (TX)	Laughlin	Ravenel
Emerson	Leach	Ray
Engel	Lehman (CA)	Reed
English	Lehman (FL)	Rhodes
Erdreich	Lent	Richardson
Espy	Levin (MI)	Ridge
Evans	Levine (CA)	Riggs
Ewing	Lewis (CA)	Rinaldo
Fascell	Lewis (FL)	Roberts
Fawell	Lewis (GA)	Roe
Fazio	Lightfoot	Roemer
Feighan	Lipinski	Rogers
Fields	Livingston	Rohrabacher
Fish	Lloyd	Ros-Lehtinen
Flake	Long	Rose
Foglietta	Lowery (CA)	Rostenkowski
Ford (MI)	Lowey (NY)	Roth
Ford (TN)	Luken	Rowland
Frank (MA)	Manton	Roybal
Franks (CT)	Markey	Russo
Frost	Marlenee	Sabo
Gallegly	Martin	Sanders
Gallo	Martinez	Sangmeister
Gaydos	Mavroules	Santorum
Gejdenson	McCandless	Sarpalius
Gekas	McCloskey	Savage
Gephardt	McCollum	Sawyer
Geren	McCrery	Saxton
Gibbons	McCurdy	Schaefer
Gilchrest	McDade	Scheuer
Gillmor	McDermott	Schroeder
Gilman	McEwen	Schulze
Gingrich	McGrath	Schumer
Glickman	McHugh	Sensenbrenner
Gonzalez	McMillan (NC)	Serrano

Sharp	Stenholm	Valentine
Shaw	Stokes	Vander Jagt
Shuster	Studds	Vento
Sikorski	Stump	Visclosky
Sisisky	Sundquist	Volkmer
Skaggs	Swett	Vucanovich
Skeen	Swift	Walker
Skelton	Synar	Washington
Slattery	Tallon	Waters
Slaughter (NY)	Tanner	Waxman
Slaughter (VA)	Tauzin	Weber
Smith (FL)	Taylor (MS)	Wheat
Smith (IA)	Taylor (NC)	Whitten
Smith (NJ)	Thomas (CA)	Williams
Smith (OR)	Thomas (GA)	Wilson
Smith (TX)	Thomas (WY)	Wise
Solarz	Thornton	Wolf
Solomon	Torres	Wolpe
Spence	Torricelli	Wyden
Spratt	Towns	Wylie
Staggers	Traficant	Yates
Stallings	Traxler	Young (FL)
Stark	Unsoeld	Zeliff
Stearns	Upton	Zimmer

NOT VOTING—6

Gray	Matsui	Weiss
Kleczka	Michel	Yatron

□ 1601

Messrs. DARDEN, KOLTER, BRYANT, and MCCANDLESS changed their vote from "aye" to "no."

Mr. PURSELL and Mr. CHANDLER changed their vote from "no" to "aye."

So the amendment in the nature of a substitute offered as a substitute for the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. NAGLE). It is now in order to debate the amendment offered by the gentleman from Florida [Mr. PETERSON].

Under a previous order of the committee, the gentleman from Florida [Mr. PETERSON] will be recognized for 32 minutes and a Member opposed will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. PETERSON].

Mr. PETERSON of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are carrying on a debate over H.R. 5. It is very, very important legislation for this Nation. At the same time it is very sensitive, very controversial, but this legislation attempts to bring stability to the workplace. Thus, with that in place, we would have increased worker-management cooperation and, thus, greater productivity.

Mr. Chairman, this bill has strong advocates on both sides. Lobbyist associations and individuals who support the labor and business community are indeed expected to be very parochial in their arguments. However, Mr. Chairman, we in Congress must represent both sides of this argument. We must seek the middle ground, for none of us represent districts with just labor and just business.

As I studied this bill, I became uncomfortable with the ambiguity presented in the language describing who precisely was to be covered under this bill. The businessmen in my district were also concerned. They were concerned that perhaps any two of their employees could form themselves into a unit, walk off and, therefore, shut down that business, and the businessmen would not be able to replace them. At the same time there would be no clarity as to the issue of who the bargaining unit really was.

Mr. Chairman, I promised then that I would address this problem, and I have done so in the form of this substitute.

My colleague, the gentleman from Texas [Mr. EDWARDS], and I have joined to find a solution acceptable to all parties. This proved to be a very difficult project. Finally, on Monday evening this week, with the assistance of the able staff from the Committee on Education and Labor, we secured a compromise that clearly eliminates the ambiguity within the language applicable to organizational strikes.

Mr. Chairman, we have prepared a substitute amendment that restricts coverage under this bill only when the strike involves a union certified by the NLRB, a union recognized specifically by the employer, a union supported by 50 percent plus one of the work force, and that that work force has waited 30 days after filing for representational election by the NLRB. The substitute does not change any other provisions in the original bill, but draws a clear and precise line as to when the bill would apply.

This is a reasonable compromise that is supported by the committee Chairs of all three jurisdictional committees over this bill, and by the labor community as well and, I would suggest, by many of the small businessmen in this Nation.

□ 1610

Mr. Chairman, this substitute makes clear beyond any doubt that this bill does not cover nonunion workplaces.

Mr. Chairman, this substitute will take us to the point of compromise, to the point where we can agree as a Nation on the protection of the workers who are out there toiling away to make our Nation more competitive, to make our Nation more effective as it deals in the international market. I urge my colleagues to support this substitute.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all I would ask the chairman if he would check the voting machine. I do not believe the vote-counting machine is working properly. I noticed the yeses did not seem to record during the last vote. Would the Chair check that out?

The CHAIRMAN pro tempore (Mr. NAGLE). The Chair will check it out. However, the Chair has found that the machine is accurate, despite the Member's aspirations.

Mr. GOODLING. I thought maybe it got stuck.

Two years from now it will be overwhelming.

At any rate, Mr. Chairman, please, let us not make H.R. 5 any worse. I know that this amendment is offered, No. 1, to get some people covered who had some real concerns, but there were no hearings, no one has really paid any attention to what it says, and it was given in good faith. But it is far worse than H.R. 5 before it was offered.

Let me give the Members an indication of why I say that. First of all, if we read it, it says: "Prevention of discrimination during and at the conclusion of labor disputes."

It says that the National Labor Relations Act is amended "by striking the period at the end of paragraph (5) and inserting '; or' and

"by adding at the end thereof the following new paragraph:

"to promise"—and this is an employer—and this is added:

"to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization—

"(I) was the certified or recognized exclusive representative * * *"

That somehow is supposed to cover labor. It does not do it.

Then, second: "at least 30 days prior to the commencement of the dispute had filed a petition pursuant to section 9(c)(1) on the basis of written authorizations by a majority of the unit employees"—and get this—" and the Board has not completed the representation proceeding * * *"—of course, they have not. We are told that even on the regional level it takes them at least 48 days. So, of course, at the end of 30 days they have not completed anything. Of course, on one hand it would appear that by saying that, we are taking out recognitional strikes. Keep in mind that when the bill was presented to the House, recognitional strikes were allowed in. Later on it appears that they put them back in. They take them out on one page and put them back in on the next page, because this is what it says:

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization * * *"

Mr. Chairman, we really are confusing the issue with this. I know it is well-intentioned, I know what the meaning was, and I know it was to cover some people. But it is not doing that. We had better go back to the drawing board and make very sure we know what we are putting in here.

Again it would appear they are protected no matter how because of course, as I indicated, it says 30 days. Suppose that they then rule at the end

of the 48 days or the 6 months that it may take them to make decision that they have not certified. I guess they are still protected. I would think so, the way I read it.

So I am hoping that if we are going to enact something that is as bad as H.R. 5, we would not compound the problem and put something in that is well-meaning but that has had no serious deliberation about it and no one is carefully examining what we are doing.

Mr. Chairman, I reserve the balance of my time.

Mr. PETERSON of Florida. Mr. Chairman, I would request that the Chair inform us as to the time remaining.

The CHAIRMAN pro tempore. The gentleman from Florida [Mr. PETERSON] has 28 minutes remaining, and the gentleman from Pennsylvania [Mr. GOODLING] has 26 minutes remaining.

Mr. PETERSON of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act, which would make it illegal for employers to hire permanent replacement workers during legal strikes, and urge my colleagues to support this important legislation. Further, I commend the leadership of the Education and Labor, Public Works and Transportation, and Energy and Commerce Committees for their responsible stewardship of this bill. And to further improve H.R. 5, I am proud to support this substitute amendment offered by Mr. PETERSON of Florida. Quite simply the Peterson amendment further clarifies that the bill does not apply to nonunion workplaces.

Quite a number of misconceptions—and just a few too many misleading reports and statements—have circulated about this bill.

First, as amended in committee, and to be further clarified by the Peterson substitute, H.R. 5 does not apply to nonunion workplaces. Just a few days ago, the American Law Division of the Congressional Research Service concluded:

> As amended, the bill would prohibit the granting of permanent replacement status or other employment preference only to those individuals who perform bargaining unit work in a labor dispute.

It has also been said that H.R. 5 would encourage workers to strike. Nothing could be further from the truth. The individuals who make these statements cannot know or understand the hardship that a strike brings every worker and his or her family. If anything, American workers want to avoid strikes as much or more than their employers.

Some say this legislation will drive American jobs to foreign countries. This is the same threat we heard when we passed a plant-closing notification law. It is simply unfounded. American workers are among the most productive in the world and no employer interested in quality and productivity is going to seek a foreign home for fear of this legislation.

And what do we know to be fact? During the 1980's, increasingly, employers replaced striking workers with permanent replacements. In a few cases, firms placed ads for new workers even before a strike began. In the case of Eastern Airlines, Frank Lorenzo acquired a healthy company, subsequently reduced benefits, and refused to bargain fairly with workers. That created a hostile labor-management environment, a faltering company, and, as we know, eventual bankruptcy. This example was repeated throughout the country in various industries.

This legislation does not ban the use of temporary replacements, nor does it impede the ability of an employer to shift work to nonunion workers or facilities in order to continue business during a strike. The employer retains those rights. In my view, passage of this legislation will promote more effective labor-management relations and reduce the number of work stoppages. The bottom line, Mr. Speaker and colleagues? American workers should not be forced to sacrifice their jobs in their attempt to obtain a fair pay and benefit package.

I urge my colleagues to support this amendment and to support this important measure on final passage.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. ARMEY], a member of the committee.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to the substitute offered by my colleague, the gentleman from Florida [Mr. PETERSON].

The substitute makes a fix to provisions of H.R. 5 which prohibit permanent replacement where unions only presume to represent nonunion employees. By requiring that the union file a petition signed by a majority of workers asking for union representation to obtain protection from permanent replacement, in effect a union could then get such majority support for union representation exactly 30 days before planning a strike and file a petition, which would be a shield from permanent replacement.

The National Labor Relations Board General Counsel summary operations for 1990 states that it regularly takes the regional offices of the Board 48 days to act on a petition for representation. Therefore, the Peterson substitute provides an automatic shield from permanent replacement within the time frame in which the Board cannot properly act on the petition, check the authenticity of the signatures, and find it insufficient to certify the union.

I might say, Mr. Chairman, that if in fact we pass this, we would find a phenomenon like the one we saw in Texas at the election of Senator Johnson a few years ago when it was said that "if I should die, bury me in Duval County so I can remain politically active."

□ 1620

I expect we will find a lot of folks in Duval County found to be politically active in the union under these circumstances.

The amendment is therefore a catch-22, forcing nonunion employers to forego employment on the basis of a unified illegal union representation petition. The result could be that businesses shut down until the board's regional hearing officer and regional director make an initial determination of the veracity of the petition. If the hearing officer and regional director state that the petition is insufficient, the union could appeal that decision to the National Labor Relations Board.

Does such an appeal process act as a stay on hiring permanent replacement workers? This is a question unanswered in the amendment.

Because the Peterson substitute creates a whole host of new problems concerning the sufficiency of representation petitions, it ties the hands of nonstriking workers while a petition is being verified.

Mr. Chairman, I must oppose the substitute, and urge Members to do the same. It is a shoddy piece of work, cobbled together in the past 24 hours, without the benefit of consideration by either the Committee on Education and Labor or the Committee on Rules. But, never mind. It was not intended to be passed in the first place, but only to provide for those who know better, but cave in to union pressure, a chance to cover their backsides.

Mr. PETERSON of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina [Mr. PRICE].

Mr. PRICE. Mr. Chairman, most of us understand very well the need for this legislation and how much working people care about it. Opponents speak of introducing an "imbalance" in labor-management power. But the imbalance has already been introduced, as more and more employers have hired or threatened to hire permanent replacements, making a mockery of existing prohibitions against firing workers for exercising their right to strike.

It is very important, however, to craft this bill carefully, to make certain we are dealing only with organized shops within the confines of the National Labor Relations Act.

Mr. Chairman, I became alarmed some weeks ago as various small business representatives came in to see me, having been told by their national associations that they were threatened by this bill. That is why, along with other Members, I wrote the gentleman from Michigan [Mr. FORD] and the gen-

tleman from Montana [Mr. WILLIAMS] some weeks ago asking for a clarifying amendment, and why we were gratified by their adoption of an amendment in committee to address this problem.

However, a gray area remains in the realm of recognition strikes, which a number of us have been working this past week to clarify. The result is the substitute amendment which the gentleman from Florida [Mr. PETERSON] now offers.

Mr. Chairman, the Peterson substitute would limit the coverage of H.R. 5 to situations where the union is certified by the NLRB, the union is recognized by the employer, or the union has been supported by petitions of a majority of the workers and has waited 30 days after filing for a representational election with the NLRB.

In other works, the amendment makes absolutely clear that nonunion workplaces are not covered by this bill. It draws clear and precise lines as to where and when the bill would apply.

Mr. Chairman, this bill offers a defensible threshold for defining the bill's coverage. But just as important as which threshold is chosen, is the fact that we are choosing a definite threshold. We are removing any vagueness as to who is and who is not covered, thus laying to rest these charges that the bill will have an uncertain and indiscriminate impact.

Mr. Chairman, this is a well-conceived amendment, and I urge its passage, and with it, the approval of the revised bill.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Chairman, I rise in strong opposition to the Peterson amendment.

Mr. Chairman, what is the difference between the Peterson amendment and H.R. 5? Thirty days. That is the only difference I can determine between the gentleman from Florida's amendment and H.R. 5.

The Peterson amendment represents business as usual in the House of Representatives. His amendment became public knowledge Monday, and my office received a copy of it last night. Just like the civil rights bill, no one knows what will be considered on the floor until the Democratic caucus acts—usually the day before the vote. If there was a problem with H.R. 5, it should have been debated in the committees of jurisdiction, not the Democratic caucus.

I think it is very important for everyone to know that the only difference between this substitute amendment and H.R. 5 is 30 days. That is it—1 month. The Peterson amendment is supposed to limit the use of replacement workers to only union settings. However, there is a huge loophole in his amendment. It would ban the use of permanent replacements if the workers have filed a petition with the National Labor Relations Board, and the Board does not act on the petition in 30 days.

The right not to join a union is just as essential as the right to join a union. None other than Samuel Gompers, the founder and first president of the AFL, said in 1918:

> There may be here and there a worker who for certain reason unexplainable to us does not join a union of labor. That is his right. It is his legal right, no matter how morally wrong he may be. It is his legal right, and no one can or dare question his exercise of that legal right.

Unfortunately, Mr. Gompers is not the current leader of the AFL. H.R. 5 would end this legal right of choice in union matters, by giving union members a greater set of rights than nonunion members. H.R. 5 disenfranchises the rights of 85 percent of the American work force, and grants protection to a small minority of workers. In the process, it destroys workers choice. The only way to protect your rights as a worker, if H.R. 5 were to become law, is to join a union. So much for Mr. Gompers sacred right.

What does this change? Absolutely nothing. The Peterson amendment is still a union organizing tool, like H.R. 5. The Peterson amendment still gives union members a greater set of rights than nonunion members, just like H.R. 5. The Peterson amendment still leaves companies with two choices—accept all union demands or go out of business—just like H.R. 5. The Peterson amendment still affects every small business in the country, just like H.R. 5. And, the small business community is opposed to the Peterson amendment, just like H.R. 5. There is no cover provided by this amendment, and don't for a minute think you can fool your constituents with the Peterson amendment. It is H.R. 5 plus 30 days. Oppose the Peterson amendment.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Chairman, I rise today in strong support of H.R. 5, the Workplace Fairness Act. I commend Chairmen FORD, DINGELL, and ROE for their commitment to this legislation and this Nation's workers.

Mr. Chairman, the Workplace Fairness Act seeks to restore the fair balance between labor and management, to improve the standard of living for American workers and American competitiveness. This legislation amends the National Labor Relations Act and the Railway Labor Act to prohibit employers from hiring permanent replacements for workers in an economic strike. It prohibits employers from giving any employment advantage to a striking worker who crosses the picket line to return to work before the end of a strike. It is important to note that this measure does not apply to nonunion workers. It thereby protects employers against undisciplined work stoppages by employees who have no identified representative authorized to settle or negotiate their differences.

In the last 10 years the use of permanent replacements has increased. In fact a GAO study showed that employers hired permanent replacements in approximately 17 percent of the strikes reported in 1985 and 1989. In about one-third of the strikes, employers threatened to hire permanent replacements.

In point of fact, there is no need for permanent replacements because employers can operate their businesses without replacing strikers. Management has a host of other options to utilize during a strike. They can hire temporary workers. They can use supervisory or management personnel. They can transfer or subcontract. Most important, they can negotiate.

If our trading partners and competitors can do it, so can we. Japan, Germany, Canada, and France all prohibit the use of permanent replacements for striking workers. So should we. The United States is falling behind in quality and productivity. Not only have real wages for American workers declined but so too has our competitive edge. We need to strengthen the balance so that employers and employees work together rather than continue to watch the balance erode in favor of management which may in turn no longer bargain in good faith.

For example, in my own district in 1986, employees of Colt Firearms struck after working for almost a year without a contract. Management replaced striking workers immediately. After much negotiation, many issues were close to being settled—except the issue of the permanent replacement workers. The economic liability favored the company with respect to the replacement workers. Over 3 years later the strike ended—not when negotiations were completed—but when the employees who struck successfully bid to purchase the division. Similar long-term strikes have occurred in Connecticut. But this particular strike was the longest in Connecticut's history. And needless to say, it was devastating.

Management systems that encourage worker involvement are essential to increasing opportunity for success, from the smallest of companies to the largest of corporations. Promoting cooperation in industry—as a Nation—we enhance our efforts to compete globally.

In 1935, the National Labor Relations Act was created. It promised workers a fair opportunity to engage in collective bargaining. The act itself states that workers shall have the right, without fear of employer discipline or discharge, to join unions, to bargain collectively, and, if no agreement can be reached, to participate in a peaceful strike to further their bargaining goals. Collective bargaining is an integral part of the maintenance of labor-management relations. This system was established to treat both employer and employee as fairly and as equitably as possible. H.R. 5 reestablishes that fair treatment, that balance.

I urge my colleagues to join me in supporting H.R. 5, the Workplace Fairness Act.

Mr. PETERSON of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Chairman, I am pleased to rise in support of the Peterson substitute and I commend the gentleman from Florida [Mr. PETERSON] for his construction modifications of

this measure. I commend the distinguished gentleman from Missouri [Mr. CLAY] for proposing this legislation and the distinguished chairman of the House Committee on Education and Labor [Mr. FORD] for his efforts in bringing this legislation to the floor at this time.

Mr. Chairman, throughout the history of labor-management relations, it has been extremely difficult for the Congress to strike a proper balance. Back in 1935, Congress adopted the Wagner Act, giving workers and unions the support they needed in their efforts to negotiate with management. One of the crucial protections granted to labor was the right to strike. However, in 1938, the Supreme Court curbed that right, in what is known as the Mackay Radio decision, wherein the Court ruled that management had the right to "permanently replace" strikers who were pursuing economic gains including wages and other working conditions. I do not believe that this decision accurately reflected the true intent of Congress in the Wagner Act.

Despite what seemed to be a severe blow to the labor movement, the Mackay decision proved to strike an even balance between labor and management. Unions still had the right to strike, while management maintained the ability to continue its business operations. Whenever a strike would occur, management was not so quick to part with their hard working, highly devoted work force because the company would incur substantial costs in the hiring and training new workers, and it would be further inhibited to replace workers because of the ill will it would have created in the community. All these factors were counterproductive to the welfare of the company. Thus, the net effect appeared to be a fair balance that kept both sides functioning.

However, over the last decade, relations between management and labor have taken a turn for the worse. A number of companies have permanently replaced their strikers when the opportunity presented itself. Workers are being punished for exercising their rights which were guaranteed by the Wagner Act. Our hard-working citizens, the people who have been diligent and loyal to their companies are being punished for exercising their right to strike for improved working conditions and increased wages.

We all recognize that it is difficult to determine just what is fair and what is in the best interests of our Nation with regard to labor-management relations. While I strongly support management's right to continue its operations, during a labor dispute we must also consider the other side of the coin. Do unions actually have the right to strike when management is permitted to hire permanent replacements? While on paper, the unions still have the right to strike, in reality Mr. Chairman, this right has been eroded. What good is the right to strike if an employee jeopardizes his employment? Under these circumstances, do union workers really have a fighting chance in their efforts to improve working conditions. The playing field in labor-management relations is supposed to be equal, yet, today it is being heavily tilted in management's favor.

For those of us who are concerned that we may be giving labor enough power to bring commerce to a screaching halt, let us consider the following: First, H.R. 5, only protects those workers which have a union acting on their behalf in a legitimate collective bargaining dispute. This bill does not apply to the ordinary worker who is dissatisfied with work and walks off the job for a few hours, days or weeks. Second, unions are at their weakest point in history since the Wagner Act was passed. Approximately only 16 percent of our current industrial work force is organized. H.R. 5 does not swing the balance of power to the unions since it only protects a small fraction of the total work force in this country. Third, there will less strife when bargaining. There will be less incentive for strikes which means that commerce will continue at its normal pace, leading to greater productivity, output and fewer losses credited to strikes.

Mr. Chairman, we all recognize that by no means is this an issue which can possibly be resolved. However, it is our duty to make difficult decisions that will hopefully enhance the lives of our citizens and the welfare of our Nation. Let us consider what will enhance the welfare of our citizenry and country. I believe it is our responsibility to reinstate the Wagner Act's intent to provide the right to strike to the workers of our country. That right was once guaranteed to them, but the Supreme Court subsequently denied them that right and deprived them of a truly valid and necessary bargaining tool to use in their pursuit of a healthier physical and economic life. We must balance the scale of justice.

Mr. Chairman, the Committee amendment restricts coverage of this bill to circumstances in which there is a majority support for a union. The Peterson substitute further restricts coverage of this bill to 30 days after a petition for an election has been filed and that petition has to be supported by 50 percent of the workers.

Moreover, the Peterson substitute assures that an employer can get a representation election before any recognitional strike can occur and the NLRB can hold such an expedited election within 30 days.

Accordingly, I urge my colleagues to make the playing field equal once again by allowing labor to compete with management on fair terms by supporting the Peterson substitute and by adopting H.R. 5.

□ 1630

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Chairman, I do not know that I can add a whole lot to this debate in that everything has already been said in opposition to H.R. 5, but I would like to point out a couple of things, especially to those Members who think they can hide under the cover of the Peterson amendment.

The proponents of H.R. 5 in my opinion have no sense of history and they are totally bankrupt in their economic philosophy. They say that we have got to have H.R. 5 because there is massive replacement of strikers all over this country, when Member after Member has come down to this well and refuted that by citing a GAO study called for by the proponents of H.R. 5 themselves that showed that only 4 percent of striking workers have been replaced. There is no massive crisis in this country. The proponents are bankrupt in economic philosophy, and I think Americans are starting to realize that. They have been totally discredited. And when they start asserting that over the 1980's, the rich have gotten richer and the poor have gotten poorer and the middle-income families have lost their standard of living, when the facts and history have shown that is absolutely not the case. It is not the case, and they still come down here in the well and continue to throw out these discredited figures.

Now, when they come to the floor and tell Members that the Peterson amendment is going to protect nonunion workers, my colleagues from right-to-work States better look at this amendment very closely because the way I understand the Peterson amendment, members of a bargaining unit cannot be replaced when they have filed a petition for recognition at least 30 days before commencement of a strike. What that means in practice is the unions go in and sign up 50 percent of employees in a company plus one; that is a majority by my definition. And they go on strike, forcing the other 50 percent of the nonunion workers to go on strike because if they cross the picket line, they can be bumped after the settlement of the strike and more senior strikers return to work.

So right-to-work State Members better look at this very closely because the impact of H.R. 5 along with Peterson means that nonunion workers are totally affected.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I do not understand the point of the gen-

tleman with respect to the remaining employees being bumped. First of all, if a majority, 50 percent plus one, as the gentleman said, 20 percent more than is now required, file a petition with authorization cards, wait 30 days to give the NLRB a chance and the employer a chance to agree to a quick election to determine majority sentiment through a secret ballot election, there is no replacement unless they wait that 30 days.

The question I have is, other than some contractual agreement that the employer has agreed to, what gives those people a right to bump the people who have remained on the job? The gentleman's point is incorrect. There is nothing in this bill, in this amendment by the gentleman from Florida [Mr. PETERSON] or in existing labor law which gives those striking employees the right to bump the employees who chose not to go out on strike.

Mr. DELAY. In practice, when one comes back in the settlement of a strike, most of the time they come back in and by seniority can bump nonunion workers that have crossed over the picket line and kept their job.

Mr. BERMAN. If the gentleman will continue to yield, the replacement workers——

Mr. DELAY. Mr. Chairman, reclaiming my time, I think we know how this operates in that nonunion workers who do not want to belong to the union are forced to participate in the strike, and we know how things work and history has proven how they work. They will be in effect bumped when the strikers come back in settlement of the strike.

It happens all across this country and has happened in history after history of settlements of strikes. So we are in a sense pulling nonunion workers and not covering them by the Peterson substitute. I just submit that Members better really look at this because it is not covered and H.R. 5 still remains in upsetting that delicate balance that we have been enjoying over the years since 1938.

The CHAIRMAN pro tempore (Mr. NAGLE). The gentleman from Texas [Mr. DELAY] has consumed 5 minutes.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Chairman, I rise in support of H.R. 5 and the Peterson amendment thereto.

Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act, which will ensure that American workers cannot be permanently replaced when exercising their right to strike. H.R. 5 will also prohibit discrimination against striking workers who return to their jobs once the dispute is over. The Workplace Fairness Act will prohibit employers from giving any advantage to a striking worker who crosses a picket line to return to work before the end of a strike. It will protect hard-working Americans when they take a stand for their families.

Since 1935, the National Labor Relations Act has guaranteed workers the right to join unions and engage in collective bargaining to protect their basic interests. The right to strike gives workers the right to withhold their labor during these negotiations. It provides American workers with economic leverage in their bargaining relationship with management. It is one of the only tools they have to protect what they have worked for. Without the right to strike, the economic balance in the collective bargaining system is undermined in favor of the employer, who no longer has the obligation to bargain.

In 1938, the Supreme Court ruled that an employer can permanently replace striking workers. At the same time, however, the Federal Government has also insured that employers cannot fire workers for exercising their right to strike. So, the American worker is caught in a bind: Free to strike, but under the fear of being permanently replaced while exercising this right.

Regardless, permanent replacement of striking workers was rare until 1981, when then-President Reagan fired the striking air traffic controllers and immediately replaced them with permanent workers. Since that time, thousands of workers exercising the right to strike for improved working conditions or better pay have actually lost jobs to permanent replacements.

While the Workplace Fairness Act does protect the rights of the worker, it is also flexible enough to provide protection for the employer, too. An employer can continue operation during a strike by subcontracting or using temporary replacements or management and supervisory personnel. And, contrary to what opponents of this bill maintain, the Workplace Fairness Act only applies to workers who engage in lawful economic strikes; it does not require an employer to reinstate strikers who engage in violent acts. And it does not apply to nonunion facilities.

Workers do not casually exercise their right to strike. The strike is the American worker's last resort—to be used when all other negotiation attempts have failed.

The Workplace Fairness Act will insure that American workers can exercise their legal right to engage fully in the collective bargaining process, without the fear of losing their jobs. It will restore their historic right to challenge corporate decisions that threaten their future. I urge my colleagues to support this legislation.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as he may consume to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I rise in support of H.R. 5.

Mr. Chairman, I will certainly vote for H.R. 5. I would strongly urge my colleagues to do the same. Frankly, I don't think the controversy and opposition is justified with the committee reported measure to prevent the permanent replacement of working men and women exercising their rights.

This legislation is very modest. It applies only to economic strikes and only to collective bargaining situations involving organized labor. It addresses the rights of workers. Its perscriptions will not be needed in 97 percent of the collective bargaining sessions that take place each year.

Yet its adoption because of unprecedented actions of the past decade will signal a new day in labor relations, for it will create a bargaining arena in which the incentive for both labor and management is the peaceful, mutual settlement of disputes by persons who realize that their future lies in working productively together. H.R. 5 will restore a balance that is today lacking. Bernie Brommer, president of our Minnesota AFL–CIO, made the point well in his testimony last winter before the Minnesota Legislature which was considering similar legislation:

> The fundamental goal of collective bargaining is to achieve a settlement of the negotiations that is acceptable to both parties. The goal is not to achieve a situation where one party can succeed in the elimination of the other.

This legislation is needed today not because the Supreme Court in 1938 made a faulty or poorly reasoned decision in the Mackay case. It is urgently needed today because hiring permanent replacement workers became a common practice for managers to inflate short-term profits through wage brinkmanship. This practice, although permitted by the Mackay ruling, had been spurned by management and the National Labor Relations Act was, in fact, working nothwithstanding the Mackay Radio case. Today the troubles of hundreds of thousands of working people who lost their jobs in the 1980's after exercising their right to strike is a new fact of the labor/management environment. Unfortunately a public deception and media tends to personify a negative attitude toward working men and womens rights.

President Reagan struck a chord by firing the air traffic controllers. A new common denominator prevailed and if an American President could do what he did to the air traffic controllers, then surely, some business management advisers preached, it would be acceptable for the business community to search the record to find rulings and regulation to subordinate the worker. Fairness and good faith bargaining, the hallmark of good collective bargaining, was thrown out the window in the process. Just as the deregulation of the savings and loan industry served as a signal to the ambitious and unscrupulous to make their fortunes by managing for short-term gratification with little thought of the future beyond the current reporting period, so too have some in the service and manufacturing sectors pressed their advantage in bargaining by hiring permanent replacement employees. They had the White House, the decline in historically strong unionized sector economy and pressed the advantage as far as possible.

The incentive for management, for that select part of management that is on the edge of acceptable behavior, that gets publicity for their outrageous, even daring innovations, is, in fact, an incentive not to settle wage disputes reasonably with a degree of mutual respect that contributes to a stable, satisfied, efficient work force. Such practice is a terribly deceptive incentive, for it leads to less profit rather than more in the long run and to a less competitive American economy today and tomorrow. Last March, Business Week compared the outcomes of union busting versus

cooperative relations with unions. Frank Lorenzo's Eastern Airlines is in liquidation. His Continental Airlines unit is in bankruptcy. Greyhound Lines is in bankruptcy. In a 1986 study of 56 manufacturers, William Cooke of Wayne State University found that "employers that had tried teamwork—about half of the sample—reported a 19-percent increase over the decade in the value added per employees.* * * The combative employers reported a 15 percent decline." These numbers speak for themselves. Antiworker tactics are not just unfair; such tactics are bad business.

H.R. 5 has been opposed because it is said that it will disadvantage employers. Such argument falls when confronted by the recent history and facts. The notion that employers are disadvantaged in bargaining if they cannot fire their work force—some may refer to this technique as permanent replacement, but its practical consequence is that workers are fired—tilts the scale heavily to the advantage of employers.

Over the years since the enactment of the National Labor Relations Act in 1935 when this Nation determined that labor/management relations would be peaceful, the balance of economic pressures of the parties has been carefully adjusted. Union workers, men and women, may not engage in sit-down strikes; union workers may not hold partial strikes; union workers may not conduct slowdown strikes or wildcat strikes or secondary boycotts. The employer's business has been fairly protected. But the fundamental right of union workers to hold a job is compromised by allowing employers to hire permanent replacements. Temporary worker replacement permitted today would still be allowed if this new policy, this fair policy of barring the firing of striking workers, is enacted.

We must signal the business world that the decade of the eighties is over. Our Nation needs sound economic growth. We need a more efficient allocation of resources, including labor. We want a bright and prosperous future rather than short-term profits exacted from the hide of workers today or tomorrow. That can only prevail with a strong labor force capable of playing a positive role with a balance of power in the collective bargaining process. H.R. 5 restores a basic element, a necessary element for the health of our U.S. economy; elemental fairness to the working men and women in the world of work.

Mr. PETERSON of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. Mr. Chairman, I want to compliment the gentleman from Florida [Mr. PETERSON] for his amendment. I think it clarifies a lot of misunderstandings in this bill.

Back in North Carolina 2 or 3 weeks ago I was at a chamber of commerce breakfast. A lady came up and said, "You are going to vote for H.R. 5. You are going to force my husband, if somebody walks out of his garage, he runs an automobile dealership, that he won't be able to hire somebody to come back and to take his place."

I said, "Absolutely not." I said, "Do you all have a union out there?"

She said, "No, we don't."

I said, "Well, then it does not affect you."

Let me make a couple of points here. There is an awful lot of misinformation that goes around in this place, especially when we talk about issues that affect people. I want to refresh my colleagues' memories. It is the same people that put out this misinformation, some of the greater organizations here in town, this is going to be one of their big votes and they are going to call the people back in their districts and this is going to be recorded on Members' report cards.

I remember back, this is not anything to do with workers or labor, this was back in the Grove City, when we considered the Grove City thing. The same people were saying, "If you vote for Grove City, you are going to have to hire homosexual people with AIDS to be youth pastors." They were passing this all through the district. Then we come back along, if my colleagues remember, and this has to do with people. We were voting on the plant closing bill. And the same information, the same people were making the same speeches. "If you vote for this plant closing bill, you are going to disrupt business all across this country. You are going to cause chaos. You are going to cause people to lose their jobs, and it is going to be absolutely chaos for the economy."

□ 1640

We passed the plant-closing bill, and just recently in my district, there were some 300 people, where a plant closed and went to Mexico, and they were asked, "What about your severance pay?" They said the 60-day notification was the severance pay.

When we came to the minimum-wage bill, it was not good enough. The administration said, "We are going to veto that minimum-wage bill, because if it is too high, and if you vote for any change in the minimum-wage bill," and, incidentally, people were calling me who were making in excess of $200,000 a year, and those were the only people that were calling me, so when we changed the minimum wage, according to all the statistics, it has not disrupted the economy. It has put a few more dollars in the pockets of working people.

To me, I do not understand what you have against working people. I urge that you support this amendment and support the bill.

Mr. GOODLING. Mr. Chairman, I yield myself 15 seconds just to merely say that we have nothing against working people. As a matter of fact, we want to try to protect their jobs, and that is why we have real concern about this particular bill, and when we talk about working people, we are talking about 100 percent of the working people, not 12 percent, which is what this bill deals with.

Mr. PETERSON of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from the State of Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Chairman, I rise to engage the author of the amendment, the gentleman from Florida [Mr. PETERSON], in a colloquy.

I note that the gentleman's amendment would amend the section of the bill dealing with the National Labor Relations Act but makes no changes in the text reported by Energy and Commerce and the Public Works Committee with respect to the Railway Labor Act.

It is my understanding that the gentleman's amendment ties into section 8(b)(7) of the NLRA, which limits the right of employees to engage in recognitional picketing. Because there is no comparable provision in the Railway Labor Act, there was no need to address this issue in the amendment for railroads and airlines.

Is my understanding correct?

Mr. PETERSON of Florida. Mr. Chairman, will the gentleman yield?

Mr. SWIFT. I am happy to yield to the gentleman from Florida.

Mr. PETERSON of Florida. Mr. Chairman, the gentleman is correct.

Mr. SWIFT. Mr. Chairman, I thank the gentleman from Florida. I would also observe that no instance has been brought to our Committee's attention of Railway Labor Act employees being replaced for engaging in recognitional picketing. Does the gentleman from Florida agree that this amendment expresses no opinion on the correctness of any judicial decisions in this area under the Railway Labor Act and that we are not addressing the issue here simply because there is no need to?

Mr. PETERSON of Florida. If the gentleman will yield further, I agree with the gentleman from Washington.

Mr. SWIFT. Mr. Chairman, I thank the gentleman. I would simply note that if it should appear in the future that this issue needs further examination, our Committee may want to revisit it at that time.

In the meantime, I thank the gentleman from Florida and commend him for his leadership in offering this amendment, which I support.

Mr. GOODLING. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I rise in opposition to the Peterson amendment and H.R. 5.

Mr. Chairman, I come to the House of Representatives as a former working person in many unions and many nonunion jobs. A few years ago, I was unemployed. My wife did not work. We had no income, no health insurance, so when I speak to the chairman this afternoon, I want to make sure that everybody knows that I understand what it is like to work for a living and scratch a few pennies to pay the bills.

I have always identified with the working man. I am a former employee, a union member, of a wire factory, a chemical plant, and for many years I was a member of the National Teachers' Association. So I am familiar with some of those issues.

Mr. Chairman, I consider myself a moderate, especially when it comes to the working men and women of this country. Unfortunately, there seem to be a lot of labor bills this session which offer little room for moderation.

Today we are looking at a bill which essentially tells business that they will purchase labor from one source only at whatever price they set or else do without.

What if, for example, we could only purchase gasoline from one service station at whatever price that station demanded or else not drive? How many of us would consider that acceptable? This analogy parallels exactly the situation that this particular bill creates.

H.R. 5 seeks to provide labor with a Government-sponsored monopoly. In any other market we would consider monopolistic pricing unacceptable.

Today we may well give organized labor exclusive control of the amount that business must spend for labor.

I realize that a strike is a tremendous hardship for workers. No one would frivolously give up weeks of wages and benefits and put their family in that position. However, it is a crippling experience for business as well.

Even the briefest shutdown can often spell a death knell for business, thus worsening the situation for the employees.

Just as I believe strikers should be allowed to seek other incomes during a strike, an employer must be allowed to take steps to see that the business does not shut down as well.

I realize that this bill does not preclude the use of temporary replacements. But what skilled worker would leave a safe, permanent job for a temporary position?

If this bill passes, I can envision three possible outcomes: Businesses give in to labor demands and either fold or raise their prices; they will move their operations to foreign countries; or they automate to minimize their labor needs. None of these are in the interests of this country or the workers.

Mr. Chairman, someday I will leave Congress and return to the labor market. At that time I will sell my services to an employer just as every other worker does, but I will not believe, as I do not believe now, that any employer must buy my services at whatever price I set or else shut down.

Mr. Chairman, I urge my colleagues to oppose H.R. 5.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. GEREN].

Mr. GEREN of Texas. Mr. Chairman, I rise in opposition to the Peterson amendment.

Mr. Chairman, it is with mixed feelings that I rise in opposition to this bill as amended by my friend, Mr. PETERSON of Florida. I understand and share the strong feelings that have inspired the authors and proponents of this bill. Over the last decade, we have seen the employer's right to hire permanent replacement workers evolve from the self-defense measure, recognized by the Supreme Court in the Mackay decision and later implicitly confirmed by Congress, become a weapon used by economic buccaneers such as Frank Lorenzo to break strikes and bust unions. Such tactics have destroyed the livelihood of thousands of American families, destroyed once healthy and thriving companies and contributed to deterioration of labor-management relations throughout our country. It is a tragedy for both its human and economic impact.

Because the toll it has taken is so high and the pain so personal, our congressional response embodied in H.R. 5 is hard-hitting and far-reaching. We have let our zeal for reform cloud our judgment. Mr. Chairman, in H.R. 5, we have overreached and for that reason I must oppose it.

Mr. Chairman, we could have crafted a bill that would have attacked these terrible abuses and prevented American working families from having to suffer from the unscrupulous tactics of the modern day robber barons of the world, a bill that would have passed and become law.

Instead, we went too far and we have before us a bill that is no more than a rhetorical exercise, a painful one at that, a bill that will never become a law of this land and the workers we all want to protect will get nothing.

This bill was inspired by union busting and strike breaking activities that have become all too common in America today. We could have helped. We could have crafted a bill to prevent these abuses. Instead, people with other agendas loaded up this bill with organizing tools and other intiatives that have assured it will never become law.

The abuses we sought to attack did not call for a bill that applies to nonunion workplaces. In fact for months, the bill's proponents claimed it did not apply to nonunion workers. A last minute amendment smoked out the true intentions of the bill's authors and put in black and white that it does apply to nonunion workplaces, not always, but in the most critical period in management-labor negotiations, the organizing phase. This was a back door effort to hitch an unrelated issue to a powerful engine of reform. A back door effort that will contribute to the bill's sure death, either by the Senate or by veto.

The overreaching does not stop with this example. The bill treats all employers, regardless of their record of labor relations and the specific needs of their industry, as if they are unscrupulous labor exploiting operators, providing no relief for legitimate and humane business needs essential to preventing a business from going under and destroying all of its jobs when it goes.

Mr. Chairman, we got greedy. We went too far. Everyone in this chamber knows this bill has no chance of ever becoming law. If it passes the Senate, and the Senate may never consider it, it will fall to a veto. Perhaps we have staged great political theater, a great afternoon soap opera for television viewers, but we have done nothing for the people we claim to serve. We have seen an afternoon of all sound and no fury.

Mr. PETERSON of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, I have been sitting here attentively listening to this debate. I must say that, contrary to the claims of the opponents, passage of H.R. 5 will not lead to the ultimate demise of this Republic.

What we are seeking to do with this legislation is to protect basic rights. Now, under present law, if workers are on strike as a result of a dispute with management, those workers cannot be fired, but they can be permanently replaced. I happen to agree with that business journal of commerce which says that that is a distinction without a difference.

But then the opponents claim and they say that if you pass this bill that is going to encourage strikes as if the working men and women of America are just sitting back there waiting to go out on strike, because the opponents claim that if they go on strike, they pay no penalty and management suffers.

My colleagues, when workers go on strike, they lose something very basic: their weekly paycheck. Workers in America do not want to go on strike. No one wins in a strike. I think we can all agree to that.

Second, then, I have heard repeatedly that this will cover everyone in all the workplaces. Simply not so.

In the Committee on Public Works I was able to have an amendment passed, and in the Committee on Education and Labor, my colleague, the gentleman from Montana [Mr. WILLIAMS], was able to have an amendment passed that addressed that very issue.

I have for all of my colleagues a 7-page memorandum from the American Law Division of the Library of Congress. The memo is entitled, "Would H.R. 5, as Amended in the Committee, Still Apply to Nonunion Employees?" The answer is clearly no.

I will sum up what this 7-page memo says: "H.R. 5, as amended, could not apply to employees in a nonunion workplace."

Do you know what this reminds me of, this debate, with all the exaggerations and all the hype? It reminds me of Woody Allen, one of my favorities. Woody Allen, in his address to graduates, said this, more than any time in history, we have arrived at the crossroads. One road leads to hopelessness and despair, the other to total extinction. Let us pray we choose wisely.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to my col-

league, the gentleman from Delaware [Mr. CARPER].

□ 1650

Mr. CARPER. Mr. Chairman, if I were an employer whose unionized work force voted by secret ballot to go on strike, and I found that I was denied the right, the opportunity to replace them, even on a temporary basis with other employees, I would not like it. I would raise bloody something.

On the other hand, if I am an employee working for somebody, and I have voted with the majority of my fellow employees, that we want to be represented by a union, and that union has negotiated a labor contract, multiyear, for a period of time, with our employer or employee, and we come to the end of the 2- or 3-year period of time, and I find that if I want to go on strike I can do so, but I will be replaced not temporarily but permanently, I would be just as angry as the employer would have been in the first instance.

I think where we stand, sometimes determines what we perceive to be beauty or fairness. Where I stand, it would not be fair to say to an employer that they cannot hire even a temporary employee; by the same token, it is not fair to the employee, to say that they will be permanently replaced if they go on strike.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to my friend, the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, today, I rise to join my colleagues in support of the Peterson substitute to the Workplace Fairness Act.

Throughout the debate on H.R. 5 we have heard criticisms that this bill is a radical step that would tilt the balance in labor-management relations in favor of labor. We have heard that organized labor is only using this bill to bolster declining membership. And we have heard that this bill is so broad that it would cripple management's ability to fire any worker who walked off the job. These allegations are simply not true.

There is no argument that workers have the right to withhold their labor in an economic strike. The Railway Labor Act of 1928 and the National Labor Relations Act of 1935 affirmed that right and ensured that neither side should have an advantage in resolving a labor dispute. But in 1938, the Supreme Court ruled that while workers could not be fired, they could be permanently replaced.

We know that the right to permanently replace striking workers is the right to fire striking workers. Eastern Airline employees were not permanently replaced, they were fired. Continental employees were not permanently replaced, they were fired. In the TWA strike, the Greyhound strike, the International Paper strike, and in strike after strike in the past decade, we have seen the striking workers fired under the guise of permanent replacements. H.R. 5 corrects this injustice and protects the jobs of those workers who are practicing their legal rights by prohibiting permanent replacements.

This bill does not apply to nonunion shops. It only applies to shops in which the union is the bargaining authority. Contrary to the fears of the chamber of commerce, two workers cannot bind together, claim they have an economic dispute and walk off the job. This does not happen in the real world and is not covered in the legislation. To further clarify this provision, Mr. PETERSON is offering a substitute that distinctly delineates the instances in which this bill would and would not apply.

While we debate this bill and delay the enactment of this legislation, we are seeing labor-management relations in this country further decay and our competitiveness in the global market further decline. We simply cannot be productive without strong relations between workers and managers. Our economy was strongest and our products irresistible in the global market, when our unions and managers worked together and trusted each other. It is no coincidence that we have lost markets to our Japanese and German competitors who protect their workers and encourage cooperation between management and labor.

I urge my colleagues to restore our global competitiveness and restore the trust between labor and management, and protect our workers. I urge my colleagues to vote with me in favor of Peterson substitute and in favor of H.R. 5.

Mr. Chairman, the Peterson substitute prohibits the permanent replacement of strikers when the strike involves: A union certified by the NLRB; a union recognized by the employer or; a union, supported by a majority of the workers, that has waited 30 days after filing for a representational election with the NLRB.

The amendment makes it clear that nonunion workplaces are not covered by the bill.

It draws a clear and precise line as to when the bill would apply.

Mr. Chairman, concerns were raised that the original bill would apply to nonunion workplaces. The committee bill amendment restricted coverage of the bill to circumstances in which there is majority support for a union.

The Peterson amendment further restricts coverage of the bill to 30 days after a petition for an election has been filed. The petition has to be supported by 50 percent of the workers.

The Peterson amendment assures that an employer can get a representation election before a recognitional strike can occur. The NLRB can hold an expedited election within the 30 days.

The amendment draws a clear line as to when strikes would be covered by the bill.

The only time a "recognitional" strike can occur under the amendment is when the employer has delayed the holding of a representational election.

Under the amendment an employer can assure that the only kind of strikes covered by the bill are those that arise after a union is recognized or certified.

The amendment is a reasonable compromise that labor has reluctantly agreed to support. It makes it clear beyond any doubt that the bill does not cover nonunion workplaces.

Mr. GOODLING. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first, it appears that the CFS and the majority staff of the proponents of the bill have an ongoing dialog since: First, the April 4, 1991, CRS memorandum quotes the majority staff; second, an amendment is proposed based, in part only, on recommendation of the CRS memorandum, but uses that initial memo for authority, and then third, the second May 7, 1991, CRS memorandum attempts to justify the proponents arguments regarding the offered amendment.

Second, the CRS memorandums are inconsistent in two important respects, but handled rather subtly by the second memorandum.

Although both memos quote the short title of the bill in their introduction sections, which mention labor disputes and this term is used in the discussion section of the April 4, 1991, memo, but the broad definition of such is never adequately addressed, particularly since: First, the memo of April 4, 1991, incorrectly states that the purpose of H.R. 5 is to prohibit employers from hiring permanent replacement employees in the course of economic strikes. The CRS memo of May 7, 1991 changes this to prohibiting employers from permanent replacing strikers. Although obviously inconsistent, both are also totally incorrect. Both the original bill and the amendment, and all discussion by the author of the amendment, declare that the bill and amendment apply in labor disputes, a term which goes way beyond strikes. Second, the original April 4, 1991, CRS memo leads me to believe that the definition of labor organization can be very liberally construed—that is, that two employees who protested working conditions could constitute a labor organization under the very expansive definition of that term; see April 4, 1991 CRS memo, pages 4 and 5. However, the CRS memo of May 7, 1991, seems to withdraw from the expansive explanation—which has caused much consternation and insecurity of the proper definition of labor organization among Members—and now claims that a majority of employees must have a representative to be a labor organization because only then could it bargain with the employer. This astute reasoning is not incorrect, but appears to change

emphasis only for the purpose of supporting the amendment proponents' claim that the bill will now apply only in a unionized setting—a false assertion.

MAJOR INCORRECT ANALYSES

The big mistake in the CRS analyses of H.R. 5 is the failure to comprehend the usage of certain terms.

First, both CRS memos are confused as to the term "bargaining unit work." The memos contend that bargaining unit work in H.R. 5 involves only union settings since a bargaining unit must be a unit which a majority of employees have designated or selected a representative. Further, the May 5, 1991, memo states that H.R. 5, as amended, "could not cover an informal, minority group of employees in an unrepresented workplace, because the employer, by law, could not recognize and bargain with such a group."

The contentions make no sense in the practice of labor law. First, bargaining unit or bargaining unit work are terms not defined in the National Labor Relations Act [NLRA]. However, the representation section, section 9, provides that the National Labor Relations Board [NLRB] shall determine the unit appropriate for the purpose of collective bargaining which may be the employer unit, craft unit, plant unit, or subdivision thereof. There may be a unit appropriate for purposes of collective bargaining, and usually is, although no union has been selected or designated to represent the employees in the unit. This is particularly true where an election has been held, pursuant to board direction, but no union has been selected. The unit remains appropriate. There may be other appropriate units in which no election has been requested or held. A union need not be in the picture for a unit to be appropriate.

An appropriate unit for bargaining consists of employees with mutual or similar interests in similar circumstances, that is, community of interest among employees. Furthermore, the Board determines the appropriateness of a unit before an election is held.

The May 7, 1991 memo states, "Given the intent to limit the bill to bargaining units," but nowhere was this intent stated or explicated by its sponsors. Contrary to the statement in the May 7, 1991 CRS memo, in both (6)(i) and (6)(ii) of H.R. 5, as amended, the term "bargaining unit work" is used—not collective bargaining unit, nor appropriate unit, not appropriate bargaining unit. The fact that the term includes work, and is focused on the term "work" is emphasized in (6)(ii). There, the term "bargaining unit work" is clearly declared by the latter term "to perform such work."

Accordingly, use of the term "bargaining unit work" does not exclude nonunion settings. As a matter of fact, the amendment offered by Mr. WILLIAMS makes it definitely more clear that H.R. 5, as amended, is meant to apply to unorganized settings. The May 7, 1991 CRS memo makes the mistake of speaking, on page 1, of an existing bargaining unit. Nowhere does the bill, as amended so state, and nowhere have the proponents so stated.

Second, the CRS memos mention labor dispute in certain places, but never adequately explain why that term is used where it is in the bill, instead of economic strike. In reading H.R. 5, as introduced, or H.R. 5 as amended, if the proponents wanted only to overrule the Mackay doctrine, they would have—could have—used the term economic strike. To do so would have limited the effect of the bill to its stated intent. In using the term labor dispute, the proponents have greatly expanded the reach of the bill. Although the CRS memo of May 7, 1991 notes that the definition of labor dispute is expansive—page 4—the memo fails to recognize the reason for this expansive term, and, incorrectly, finds that because of other definitions it cannot be as expansive as it really is.

The word strike is nowhere in the bill as introduced or amended. As noted, the May 7, 1991 CRS memo incorrectly explains bargaining unit and bargaining unit work. Therefore, the conclusion, which uses those terms incorrectly defined, fails to understand the impact of labor dispute, as well. Since a labor dispute encompasses any problem between an employer and a union, or between an employer and employees, or between an employee and a union, or between an employer and nonemployees, or even between two unions, it is obvious that the term goes beyond a strike or an economic strike. Accordingly, the bill, as amended, prohibits an employer from permanently replacing an employee who goes on strike—or misses work—for reasons totally unrelated to an economic strike. For instance, an employer would commit an unfair labor practice if he or she replaced an employee—unionized or not—who strikes because of a jurisdictional dispute—work assignment—with another union—or group of employees. Even any prohibited activity by a union under the NLRA would not allow an employer the privilege of replacing an employee who leaves the job in support of the union, unless that individual's activities are specifically prohibited by the NLRA—that is, for cause, or loses his status as an employee, terms within the NLRA itself. A union's unfair labor practices are not imparted to individual employees. And since an existing bargaining unit does not have to be in place to have the bill take effect, if there is a representation labor dispute, an employer would be prohibited from replacing an employee who strikes for recognition within or outside the collective bargaining law as a labor dispute. There is no limiting language in the amendment.

Third, the words "collective bargaining representative" in the amendment to H.R. 5 are not as limited as the May 7, 1991, CRS memo suggests. This is so mainly because those words are modified by the phrase "labor organization that is acting as" the collective bargaining representative.

Usually, under the NLRA, collective bargaining representative refers to the labor organization or individual who represents the employees—a majority of the employees—in an appropriate unit. If, however, the amendment to H.R. 5 had wanted to keep within the usual meaning, the modifying phrase would have been "which is" instead of "that is acting as" the collective bargaining representative.

The May 7, 1991, CRS memo implies that the bill, as amended, would not apply where there is no existing collective bargaining representative. But, as worded, the amendment does not prohibit organizational activity, and the union has only to act as the collective bargaining representative of those employees seeking to organize. Under this obvious understanding and intention, the bill would prohibit an employer from replacing an employee or showing preference to a nonunion employee during the course of an organizational drive by a union.

That the above is so is reflected in the remarks of Mr. WILLIAMS, when he introduced the amendment to H.R. 5:

> The purpose * * * to make absolutely clear * * * H.R. 5 does not apply to any labor dispute or walkout that does not involve a union acting as the collective bargaining representatives of the employees involved in the dispute.

That is not saying that the union has to be the collective bargaining representative. That is not saying that an economic strike must be involved. That is not saying that the union must represent a majority of the employees in an appropriate unit.

That is saying that a union must be involved somewhere for an employee to be protected. That is saying that an employee can have a union acting as his or her collective bargaining representative to be protected against permanent replacement.

That the amendment applies to representational disputes was clear when Mr. WILLIAMS offered the amendment—page 110, Education and Labor full committee markup: "[B]argaining unit work is the term that has no meaning unless the employees have or are seeking collective bargaining." This statement clarifies that the bill, H.R. 5, as amended, is and can be, and is intended to be, used as an organizing tool. The statement by Mr. WILLIAMS is directly contrary to the May 7, 1991, CRS memo's conclusions.

Fourth, as noted, the term labor organization is inconsistently explained

between the April 4, 1991, memo and the May 7, 1991, memo. Actually, the labor organization term is useful only to clarify that preferences are available only to unionized employees or those who support a union—a first-time distinction. Actually, as used, the term labor organization will, for the first time, cause discrimination under the NLRA. Republican Members have pointed out that the NLRA protects union and nonunion employees alike in their mutual concerted activity or their right to refrain from such. This bill, as amended, says an employee can be discriminated against if he or she is not part of a labor organization. This concept is totally inconsistent with section 7 of the NLRA, the heart of the act.

Fifth, the CRS memos speak of the rights of employees to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection. That language comes from section 7 of the act. The memos also address the right to strike. Although the April 4, 1991, memo would lead one to believe that the right to strike grows out of section 7, that right is found in section 13 of the act. Remember, there is no constitutional right to strike or any other right except the right or privilege granted in section 13 of the act.

The equally important right the memos fail to address is the right in section 7, which is the right to refrain from concerted activities, et cetera. That means that section 7 also protects the right to refrain from striking. The memo of April 4, 1991, states that an employer may not discharge strikers, because it would violate the purpose of the act to permit the discharge of employees who are engaged in activity that is expressly protected by the law. However, this and the May 7, 1991, memo failed to mention that it would violate the purpose of the act to discharge or discriminate against employees who are engaged in activity protected by the law—section 7—which is the right to refrain from striking. H.R. 5 as introduced, and amended, is directly contrary to this aspect of activity protected by the law. The omission of such an equally protected activity in these memos make them adequately flawed to be of any intelligible help in the analysis of this legislation—particularly as to whether they cover nonunion—right to refrain—employees or not.

Sixth, H.R. 5, as amended, applies to nonunion employees. That is the basis of this bill. H.R. 5 would prohibit an employer from replacing any employee who supports a union. It would not prohibit an employer from replacing an employee who is nonunion, thereby discriminating against any employee who does not support a union. Because it protects one and not the other does not mean it does not apply. It's like looking at the elephant. Language in legislation must be clear—so must language in an analysis.

Seventh, not a fault of the CRS memos, but the short title to H.R. 5—and, as amended—states: "To amend the [NLRA] * * * to prevent discrimination based on participation in labor disputes." Actually, the bill creates discrimination, or attempts to do so. It does this by discriminating against employees who fail to support or join a labor organization.

Mr. Chairman, therefore I would not hang my hat on seven pages, or whatever was mentioned, of some report from CRS, because I believe if some labor lawyers would get ahold of that report, they would sure have real fun with it.

Again, I would encourage Members not to make a bad piece of legislation even worse. Some may say that is difficult to do. I am sure it is unintentional. However, it has to be a smoking mirror attempt to provide cover for some.

The bill, again I repeat, for the first time creates a distinction in law between union and nonunion workers. The bill does one thing, and does it very well. It provides a perfect tool for those desiring to organize the work force. Next year or the year after, or perhaps 2 or 3 years from now, we will be back. This has been an exercise in futility. We know it is going nowhere. Then we will come back, and then we will sit down and try to be reasonable, and see if we cannot fine tune something that probably needs some fine tuning.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to my good friend, the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I rise in support of the gentleman's amendment and in support of the legislation.

Mr. Chairman, this legislation is simply about basic fairness. It is about the fairness of the workplace. It is about people's rights and responsibilities both on behalf of the employees and employers.

We have examined the American workplace over the last decade and longer, as we have continued to worry about productivity, including one of the things that we see that lends most to productivity, which is a fair workplace, a place where employees are involved in the decisionmaking powers of that workplace.

To suggest that we are going to embrace a provision of the law that allows an employer to be absolutely arbitrary and capricious with respect to his employees, and at that point, should they decide to forego pay, to forego the benefits, and to go out on strike, to then be dismissed in favor of permanent employees, is an outrageous act. It will not lead to more productivity. It will not lead to peace in the workplace. It will not lead to workers and employers working together for the benefit of this Nation.

This legislation is to prevent those kinds of arbitrary capricious acts by employers. It is about fairness to workers, to their families. It is about bringing the workplace together in the name of productivity, in the names of the rights and responsibilities of both parties. We should pass this legislation overwhelmingly. We should pass the Peterson amendment overwhelmingly.

□ 1700

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, very briefly, I rise in support of the amendment.

The gentleman from Pennsylvania [Mr. GOODLING] gave an interesting argument that does this bill really only apply to the unionized worker, the collective bargaining situation, because of its reference to bargaining units and talking about a CRS memo with respect to the application of terms that could very well apply in any nonunion situation or where unions lost an election, and therefore it is not a unionized work force; but the Peterson amendment talks in the concept of certification procedures, recognition procedures, processes which define this.

The irony is that the gentleman from Ohio [Mr. BOEHNER] says that this gives protection to union workers greater than the protection to nonunion workers, and the gentleman from Pennslyvania [Mr. GOODLING] says this bill applies to nonunion workers. You cannot have it both ways.

The fact is this bill is focused on the unionized workers, either in the context of traditional economic strikes, or in the limited situations where a recognitional strike is allowed under the very carefully crafted terms of the Peterson amendment, and the argument of the gentleman from Ohio [Mr. BOEHNER] is wrong. On the other side of the aisle they should stop using both inconsistent arguments at the same time.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, does an American citizen really have a right to vote if he is thrown into prison for voting? Does an American citizen really have a right to express his political view if he must pay a fine for speaking? Does an American citizen really have a right to strike if his employer can fire him when he exercises that right?

There is no right to strike if exercising that right costs you your job. We all regret strikes. They represent a failure to negotiate, a failure to agree, but when the basic rights of a worker are at stake and he chooses to walk off

the job and away from his paycheck to protest the disagreement, he is exercising an American right paid for with the blood and suffering of thousands who have gone before him.

Some Republicans and some in the business community can twist this issue into rhetorical knots. Men and women who are ready to risk their lives for principle and dignity understand this issue clearly.

Support the Peterson amendment and support this legislation.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan [Mr. FORD], the chairman of the Committee on Education and Labor.

Mr. FORD of Michigan. Mr. Chairman, I rise to support the Peterson amendment.

I want to make it very clear at the outset that as the chairman of the Education and Labor Committee, I appreciate the way in which the gentleman has approached this legislation and his reservations about it. The gentleman has brought those reservations to our attention. We were not able at first to respond in a positive way to his concerns, but as he persisted, and he has been persistent, he has enabled us to endorse his amendment, because, in fact, what it does is answer the people who would pick on nits, the nitpickers who try to twist words to create doubt where none should exist.

In the committee we amended the bill. We thought we amended it in a way that made it abundantly clear that the kind of strike that was being protected would have to be called by an existing union.

Now, unfortunately, after we amended the bill, various organizations for their own purposes, in some cases to raise money from people they scared the hell out of so that they could get money from them, confused the issue and created a gray area; but what the gentleman from Florida [Mr. PETERSON] did at exactly the right time was show us a way with mathematical precision to write language that no lawyer—and I am a former labor lawyer—can twist around to mean anything except that if you do not have a union in your place of employment, there is no effect on your place of employment by this legislation.

The Peterson amendment is a clarification of the original intent of the bill and the amendment adopted in committee. We never intended H.R. 5 to cover nonunion workplaces, but the definition of "nonunion workplace" does not appear in the bill. The Peterson amendment effectively supplies the definition: The workplace is covered only if a majority of employees in an appropriate unit sign authorization cards for a union, petition the NLRB for a representation election, and then wait 30 days. If the union loses the election it loses any protection under the bill.

This amendment is fair to employers and employees alike. It is not a weakening amendment; it is a clarifying amendment. It deserves our support.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, I rise in support of the Peterson amendment in the nature of a substitute. Since introducing H.R. 5, I have been deluged by concerns that the bill's protection will be used for frivolous reasons. While I personally believe that the protection of this legislation should be applicable to all workers who are legitimately engaged in a strike, I have acquiesced in efforts to address these concerns by limiting the provisions of H.R. 5 to circumstances in which a union is involved in the labor dispute.

In Committee, we adopted an amendment to address this concern. That amendment provided that the protection of H.R. 5 would be limited to strikes involving labor unions. Where employees were acting collectively on their own, regardless of the justifications for their actions, they would not be protected. However, the amendment adopted by the Committee protects and is intended to protect those employees who have formed a union and are seeking representation from their employers.

Now it is being contended that this protection is a loophole—that employees will walk off the job in order to go hunting or for some other nefarious and illegitimate reason and then claim they were seeking to form a union. Well, the Peterson amendment fully addresses the perceived, and in my view imaginary problem. Under this amendment, the employees must first circulate a certification petition and must obtain majority support for that petition. The employees must then file their petition with the NLRB. Then, before they fall within the purview of H.R. 5, they must wait 30 days. If the employer believes the petition is spurious, it is fully within the employer's ability to obtain an election within 30 days. Assuming the employer does not wish to contest an election, the NLRB is fully capable of conducting that election within a week, 10 days at the outside. If the union loses that election, then the employees are outside of the purview of H.R. 5. If they strike, they may be permanently replaced. If the employees strike before the expiration of the 30-day period and no election has been held, then once again the employees may be permanently replaced.

To the extent that the Boehlert-Williams amendment left any loopholes, a proposition I believe to be more fancy than fact, this amendment closes that loophole once and for all. If this amendment is adopted, those who believe that H.R. 5 raised any kind of problem with regard to nonunion employees no longer have an excuse to vote against this legislation. I urge the adoption of the Peterson amendment in the nature of a substitute.

Mr. PETERSON of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, as chairman of the subcommittee that had jurisdiction over this legislation, I want to assure my colleagues and place in the RECORD for whatever future use it might be that we have always intended that this legislation apply only to what has loosely been referred to as union workplaces. That workplace is the only one we have ever intended to be covered by this bill.

When the gentleman from Missouri introduced the bill, we used the term "labor organization." Some have doubted that that was definite enough or inclusive enough, so I amended it to assure that it only covered organizations acting as a bargaining agent.

The gentleman from Florida [Mr. PETERSON] has further refined it to say that not only must 50 percent plus one of the relevant work force support the union but they must also ask for an election petitioned by the NLRB, and then wait 30 days before they can strike and be protected by this legislation; so I am hopeful that our intention is now defined and secure in this legislation. It only affects union workplaces.

Mr. GOODLING. Mr. Chairman, I yield myself 30 seconds to respond to a comment that was made, that we cannot have it both ways.

We were actually both right, the gentleman from Ohio [Mr. BOEHNER] and myself. If a nonunion shop goes out on strike, they can be permanently replaced. If a union shop goes out on strike, they cannot be replaced; so basically I am correct.

Then, of course, the gentleman from Ohio [Mr. BOEHNER] says, however, if the union comes in and tries to organize the nonunion shop, you have a totally different situation; so basically we are both correct and it is not confused.

I will see you in two years when we negotiate in good faith and come up with a winner.

Mr. Chairman, I yield back the balance of my time.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as he may consume to the gentleman from Georgia [Mr. RAY].

Mr. RAY. Mr. Chairman, I rise in opposition to H.R. 5, the Striker Replacement Act.

This bill would ban the hiring of permanent replacement workers when employees strike for economic reasons such as higher wages or better benefits. This issue is a complex one with current law based on Federal statutes and National Labor Relations Board [NLRB] decisions. The Supreme Court ruled in a 1938 decision—NLRB versus Mackay Radio—that an employer's "right to protect and continue"

their business justifies the hiring of permanent replacements for employees on strike. The law has remained untouched since that 1938 decision.

The enactment of H.R. 5 would allow workers to strike for economic reasons with full job protection. It would leave the employer with little option except to close his doors. This is clearly not the intent of our Federal labor relations policy which is to encourage collective bargaining. I am fearful that this bill's enactment will lead to more strikes and more companies being forced out of business. This hurts employees, business owners, and our economy. It is a change for the worse—not for the better.

For these reasons, I must oppose H.R. 5, and I encourage my colleagues to reject this legislation and seek ways to reduce the threat of strikes—not increase it.

Mr. PETERSON of Florida. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Chairman, I rise in strong support of H.R. 5 and the Peterson amendment as a blow for freedom in this country for labor.

Mr. PETERSON of Florida. Mr. Chairman, I yield the balance of our time to the gentleman from Missouri [Mr. GEPHARDT], the distinguished majority leader.

□ 1710

Mr. GEPHARDT. Mr. Chairman, and my colleagues, the Workplace Fairness Act fits in a larger context than simply a debate over labor-management relations.

It involves more fundamental issues: What kind of society do we want, and what kind of economy do we want for ourselves, for our children, and for the communities we represent.

When I go home to St. Louis, in virtually every town meeting I hold, I am asked: How can we justify paying Americans $15 an hour when Malaysian, Mexican, or Chinese workers receive just $1 for the same work?

There are three ways we can do this: One is protectionism—which we reject as destructive and counterproductive.

The second way is to become 15 times more productive. That is the path the Germans and the Japanese have chosen. It is the democratic way of paying higher wages for better workers—better educated, better trained, better managed, better organized, and better appreciated workers.

Silently, without public debate, the Republicans have chosen a third way—low wages for American workers—and this policy has taken its toll.

When we fail to enforce trade laws and permit dumping; when we let our schools deteriorate; when we lock the doors of college and opportunity to millions of American families; and when we countenance permanent replacements—American living standards go down in a pointless and futile and unjust pursuit of greater competitiveness through lowered wages and lowered expectations.

America will regain its economic strength only when we commit ourselves to becoming a high-wage and high-skill society.

It is what the Europeans have done. It is what the Japanese have done. And now America must do it as well.

That effort does not end with the passage of H.R. 5; but it is a very good place to begin.

Who gets hurt when permanent replacements are used? Not unions—families. These days, most contract disputes are not over big pay raises; they are over big wage cuts or reductions in health-care coverage.

Often working families are taking a stand to protect benefits promised them in prior agreements with management. Paid vacation, sick days, maternity leave, safer working conditions—these are the benefits workers are simply fighting to protect—benefits they have already earned.

The workplace fairness bill, being considered by the House of Representatives today, simply prohibits the hiring of permanent replacements for union workers who exercise their fundamental rights to strike.

This bill does not apply to nonunion small businesses or any other sized nonunion plant. It even allows management in union plants to hire temporary replacements for striking workers in order to maintain some production capability.

Closing this loophole would make our laws consistent with those of our advanced world trading partners, countries which are already as or more competitive than are we.

They value good relations between labor and management and feel their economies function better because they make this effort.

Yesterday, I shook the hand of Ted Ramirez, a machinist from Miami, who used to work at Eastern Airlines.

Beginning in 1976, his union took a series of devasting pay cuts because they wanted to help save the company.

He had pride in that organization, he gave it 25 years of his life, and he proudly moved from ramp serviceman to become part of the unit that designed Eastern's cost efficiencies.

Frank Lorenzo, the corporate profiteer, forced unionized employees' backs to the wall, asked for more givebacks than they could afford, and permanently replaced them when they went out on strike.

Ted Ramirez now calls himself fortunate because he has a job selling men's clothes at $5 an hour.

"We play by the rules," he said, "and we fight for our Nation when we're called. Now it is time our Government started giving us a little protection in return."

Can we do anything else but reward his decency and his confidence in the system with the little help that he is asking—not just for himself but for the rest of the men and women who break their backs every day to make our economy grow?

I urge my colleagues. Hear Ted Ramirez's plea, and the pleas of thousands of others he represents. Let us restore fairness to our system and stability to our economy—let us pass H.R. 5.

Mrs. LLOYD. Mr. Chairman, I rise in support of H.R. 5. I do so only because the Peterson amendment was adopted on the House floor today which makes clear that the legislation does not cover nonunion employers.

While I will support the bill, I do so with reservations. I by no means see H.R. 5 in its present form as a final solution to the broad issues in disagreement and I will reserve judgment on the future of this bill.

Unfortunately, I think that faults on both sides have brought us to this point today.

I am sympathetic to the concerns the business community has raised over H.R. 5. I realize that a company subjected to a strike suffers from lost productivity and profits. We are all concerned with America's competitiveness and we understand that our businesses face unfair practices from overseas. American business must have the flexibility to respond to these challenges. But we need to consider some of the startling occurrences that have been brought out by this discussion.

Over the last decade, some major employers have demonstrated no sense of loyalty to long-term workers who have helped build companies and communities. These are tough economic times for our families too and many American workers have their backs against the wall in bargaining for just wages, working conditions, and health and pension benefits. Business and labor should be able to discuss these issues in a constructive manner. All Americans deserve this consideration.

I feel it is important that this legislation be initially adopted as a vehicle for further discussions and that passage of H.R. 5 should be viewed only as a starting point. We must restore a balance and fairness to labor-management relations. I hope that passage of H.R. 5 will allow us to pursue that objective.

Mr. DE LUGO. Mr. Chairman, I speak today in support of the amendment offered by the gentleman from Florida. The language in this amendment strikes a fair balance amid the controversy that surrounded the Workplace Fairness Act.

In the past decade we have seen the Nation's economy and the global economy change in many ways, some of them drastic, many of them affecting the very foundations of the American workplace. We have seen our country move from a creditor to a debtor nation as our balance of trade has tilted in favor of foreign countries. We have seen substantial decreases in American manufacturing jobs and significant increases in service jobs. We have witnessed corporate mergers designed to improve productivity and reduce competition. We have seen much of our research and development go to foreign corporations who sell their products back to us.

We have seen changes, too, in the American work force. Deemed to be no longer competitive with lower paid, foreign labor, many

corporations have taken their business abroad. Companies have down sizes, or restructured, to take advantage of non-U.S. workers. Union membership has dropped as employees have been pushed aside by American companies, or as relocations have caused enormous shifts in the location of the domestic work force.

In years past, in times of more robust growth and less global competition, there was an even balance between labor and management that for decades worked well indeed. When labor did not receive the benefits workers felt they justly deserved, they organized, and bargained and, if necessary, struck. Almost always, a just agreement was reached.

But now, in these new economic times, corporate attitudes have shifted. Perfectly willing to take their manufacturing elsewhere but still striving to take advantage of the huge, American consumer marketplace, corporations have entered into labor disputes actually hoping for a strike as an excuse to shut down a plant, or to hire nonorganized laborers to fill positions at a lower, more competitive price, with little or no social conscience, and with little or no attention paid to quality of product.

This is not right. If America is to be the marketplace where products and services are consumed, it must also be the workplace where products are built and services are delivered. If our competition has shifted from the domestic to the world stage, we must take several steps. We must encourage improved education in this country so that our future workers are equipped with the skills needed to compete in this new environment. We must see that corporate America becomes more willing to invest in its own, long-term future instead of seeking the short-term profit. We must see that companies be willing to train for the jobs they will need instead of sending work orders overseas. We must see that America's competitive edge—which is so dependent upon the abilities of its workers—is not lost through selfish decisions made in the boardrooms.

But first and foremost, we must ensure that American workers do not become extinct, that they not be thrown aside like refuse in the corporate quest for a quick dollar, while slowly, inevitably, the world overtakes us.

That is why the Fairness Act is so important. We are not protecting unions, nor are we encouraging foreign competition by protecting American workers from unfairness. We are seeing that the American worker remains a part of the system and a part of the process that for years has helped to make our Nation great.

I urge my colleagues to vote in favor of the amendment offered here today by the gentleman from Florida. For here is legislation that will keep America strong by keeping the American worker a part of the future.

Mr. LAFALCE. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act. H.R. 5 acknowledges and restores the intent of the National Labor Relations Act of 1935, which gave workers the right to withhold their labor when all other means of collective bargaining have failed. Section 157 of title XXIX United States Code states that "employees shall have the right to self-organizations, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities." Numerous judicial decisions have confirmed conclusively that a strike is concerted activity within the provision of the act. Section 158 (a)(1) and (a)(3) enforce these employee rights by declaring "it shall be an unfair labor practice for an employer: to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 157 of this title; or by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Finally, section 163 of title XXIX expressly states that "nothing in this act * * * shall be construed so as either to interfere with or impede or diminish in any way the right to strike." Thus, employers who terminated employees for going on strike or for otherwise engaging in concerted activity would violate section 158 of the NLRA. Employers found guilty of such unfair labor practices would be required to reinstate affected employees and provide them any back pay.

In contrast to the act, the Supreme Court said, in extraneous language, in the 1938 case NLRB versus Mackay Radio, that employers are "not bound to discharge those hired to fill the place of strikers * * * in order to create a place for the [strikers]." In reliance upon that Supreme Court extraneous language, some employers have concluded that while it is an unfair labor practice to fire workers who exercised their legal right to withhold labor, it is permissible to permanently replace them. But surely, a worker who is permanently replaced without getting his old job back can see no difference between being permanently replaced and being fired. Nor can I.

For many years, employers did not take advantage of this extraneous language. However, recent events have signaled a change in employers' willingness to permanently replace their employees, and this change has made it imperative that Congress intercede. H.R. 5 simply clarifies employees' right to strike guaranteed by the NLRA and prevents employers from interfering with this right by hiring or threatening to hire permanent replacement workers.

Some opponents have alleged it will diminish our industrial competitiveness in the rapidly changing global economy. While I applaud and share my colleagues' interest in promoting our competitiveness, this bill will not harm our ability to compete, it will merely bring our labor law into accord with other industrialized nations.

Legal specialists at the Congressional Research Service law library, who compared United States labor laws with those in other industrialized nations, found that Belgium, France, Germany, Greece, Italy, Japan, the Netherlands, and Sweden "reject the idea of dismissing striking workers. In [these] countries, the strike brings about only a temporary suspension of the labor contract. Thus, none of these countries empowers an employer to terminate the striking workers' employment and hire permanent replacement workers." Indeed, in the case of Japan, our biggest international competitor, "the employer practice of discharging striking members and replacing them with newly hired workers is still unknown."

Furthermore, the report found that while Great Britain and Canada lack a national prohibition on the use of permanent replacements, both place stringent limitations on the ability of employers to hire permanent replacements. In Britain, if an employer wishes to "avoid" the risk of complaints of unfair dismissal, he must dismiss all or none of the striking workers. And if the employer decides to rehire within 3 months of dismissal, all of the workers who have been engaged in a strike must be rehired.

Furthermore, three substantial Canadian provinces, Quebec, Manitoba, and Ontario, which together comprise 17 million of Canada's 26 million residents or some 66 percent of the entire population, forbid or sharply limit the use of permanent replacements.

The Quebec Labour Code expressly prohibits employers from hiring replacement workers during a lawful strike. The province of Manitoba has adopted a law that prohibits the hiring of a permanent replacement. Ontario's Labour Law gives striking workers a guarantee of reinstatement for a period of six months from the commencement of a lawful strike.

Thus, H.R. 5 cannot be attacked for making us less competitive relative to our foremost competitors. Indeed, other industrialized nations prohibit employers from permanently replacing striking workers because of economic concerns. If an employer permanently replaces striking workers with new and less trained workers, he throws away a large investment in human capital. Permanent replacements will not achieve equivalent levels of productivity for months or years. Finally, the use of permanent replacements jeopardizes peaceful labor relations, thereby further decreasing employee productivity in the affected company and throughout American industry.

Mr. Chairman, a vote today for H.R. 5 is nothing less than a strong step toward clarifying that American labor law should be in line with other industrialized nations and limiting employer actions that could have negative effects on American industrial competitiveness.

Mr. SMITH of Florida. Mr. Chairman, I rise today in support of H.R. 5, the Fairness in the Workplace Act of 1991. This important legislation will ensure fairness in relations between labor and management. This bill has been carefully crafted to guarantee American workers a more equitable working environment. American law affords workers an opportunity to demonstrate their discontent, as a last resort in a labor dispute, to stand up and organize a legal strike. H.R. 5 will futher protect them by making it unlawful for employers to permanently replace employees who participate in a legal strike.

While it is unlawful for an employer to fire a worker for taking part in a lawful strike, that same employer is not prevented from permanently replacing the striking worker. This irregularity is absurd and totally inequitable. What is the difference to an employee if he/she is fired or permanently replaced? The end result is still no paycheck.

There is no incentive for a company to settle a labor dispute under the current system. H.R. 5 will restore balance and fairness to the

collective bargaining process between employees and employers.

Workers do not decide to go on strike on a whim; they use it as a last resort. A strike means a loss of income, benefits, seniority, and tremendous disruption of one's life. It is time to send a message out to American workers that we in Congress recognize their struggle and will do everything within our power to make sure they receive equitable treatment and job security.

Mr. EWING. Mr. Chairman, I rise in opposition to H.R. 5, the striker replacement legislation.

I am deeply concerned that this legislation would have a devastating effect on labor-management relations, on America's economy, and on countless American families. I do not oppose H.R. 5 because I am opposed to organized labor or the right to strike, but because this legislation would really hurt those who it is intended to help; average American workers.

There is a great deal of misunderstanding about this issue. The backers of this legislation would have us believe that those going on strike can be fired at any time and have no recourse. However, under the 1938 U.S. Supreme Court decision in NLRB versus Mackay Radio and Telegraph Co., strikers protesting "unfair labor practices" were guaranteed immediate reinstatement to their jobs once the strike ended. This precedent has stood for 53 years. Indeed, such strikers are guaranteed their jobs even if replacements must be fired, and often receive back pay. After an economic strike, which involves issues such as benefits and pay, workers are guaranteed reinstatement as soon as jobs filled in the interim are again open, thus limiting the ability of companies to use permanent replacements.

The sponsors of H.R. 5 want us to believe that there is widespread replacement of those striking for economic reasons, but this is simply not the case. While there certainly have been some well-known examples of strikers being replaced, such as the replacement of Eastern Airlines strikers, the fact of the matter is that this rarely happens. As Labor Secretary Lynn Martin has pointed out, during the past decade only 4 percent of striking American workers had been permanently replaced.

The relationship between management and aggrieved employees is a very delicate one, and current policy, which has worked well for over 50 years, should not be changed. Workers know that if they strike they have reassurances that they will not forever lose their jobs, and employers have the ability to hire replacement workers, thus preventing the business from collapsing. If H.R. 5 becomes law, this balance would be destroyed since union members would have no reason to refrain from striking.

The extraordinary power that this legislation transfers to unions would mean more strikes. It would turn the strike option from an act of last resort to a preferred weapon. It would drive a tremendous wedge between labor and management, encourage confrontation, cripple business functions, and wreak havoc on the American economy. Failing businesses means fewer jobs and a failing economy, which is bad for all Americans.

Small business in this country cannot afford H.R. 5. H.R. 5 would undermine the checks and balance system provided in current collective bargaining agreements. For a small business to be prohibited from hiring replacement workers, is a sure way to lead them to economic extinction and real job losses.

We are all concerned today about the number of American jobs going abroad. This legislation would do a great deal to encourage jobs to go elsewhere. Companies which are crippled by strikes are likely to consider moving their operations overseas, where American jobs will be replaced permanently. I hope my colleagues will consider this when casting their vote on H.R. 5.

Mr. Chairman, of course this legislation would be bad for business. But it would also be bad for the working men and women of this country. I will oppose H.R. 5 and encourage my colleagues to do the same.

Mrs. LOWEY of New York. Mr. Chairman, as a cosponsor, I rise in support of H.R. 5, the Workplace Fairness Act. This bill is a fair and just manner of restoring balance in labor-management relations, which have been unbalanced in recent years by the growing use by some employers of permanent replacement workers to end strikes and break unions.

Most employers in this Nation continue to deal fairly and responsibly with their employees. However, during the past 10 years, a crisis has developed in which a small group of employers have sought to break unions by deliberately forcing their workers to go on strike through unreasonable negotiating tactics, then replacing them on a permanent basis. In some of these cases, employers have actually advertised for replacement workers before negotiations reached an impasse. Thousands of workers have lost their jobs unfairly as a result of this growing practice.

This pattern has disrupted the collective bargaining process and is undermining stable labor-management relations. Workers are intimidated into giving up the right to strike, which is a basic legal right protected by current law. This tilts the balance of power in labor disputes decisively in the favor of the employer.

It is no coincidence that working Americans—both union and nonunion—have suffered from declining wages during the past decade. During this period, when management's hand was significantly strengthened by increased use of replacement workers, real weekly wages of American workers dropped almost 6 percent. At this point in time, the United States ranks seventh among industrial nations in overall wage rates.

Clearly, the practice of permanently replacing workers has strengthened the hand of employers in labor disputes. But this strengthened hand has not at all increased our Nation's competitiveness. On the contrary, while wages have actually dropped, our competitive posture has been harmed. One reason is that the practice of permanently replacing workers has left many major companies without a trained and experienced work force. It is no surprise that our ability to compete in the world marketplace is decreasing when we are relying less on skilled labor, and more on workers who are not trained to do the job.

At the same time, Germany and Japan, whose ability to compete in the world marketplace is unquestioned, both guarantee their workers the right to reinstatement after a strike is over. While some American employers have focused on the short-term gains involved in breaking a union and cutting wages, their competitors overseas have learned that reliance on a trained work force is essential in order to produce a quality product. This makes it clear that H.R. 5 will contribute to American competitiveness, rather than detract from it in any way.

Some opponents of this legislation claim that it will encourage an excessive number of lengthy strikes. In this regard, it is important to note that strikes always have an enormous negative effect on workers. A decision to engage in a strike is never taken lightly, since it involves the loss of all compensation, and imposes numerous personal and financial hardships. This bill will not change that situation in any way; therefore, it will not act as an incentive for further strike activity. In fact, strikes involving replacement workers are particularly adversarial and protracted. This bill will make it more likely that strikes, when they happen, will be resolved more quickly and in a more amicable fashion.

In addition, opponents claim that the bill will provide workers with an unfair advantage in labor disputes. However, employers will continue to have many options for maintaining their operations during a strike. The most important of these options is the use of temporary replacement workers, which can be used legally for the duration of any strike. In addition, employers may use supervisory or management personnel in place of strikers, transfer or subcontract work, and stockpile in advance of a strike. Employers have prevailed in numerous strikes through the years without hiring permanent replacement workers or even threatening to hire them, and this situation is not likely to change under this bill.

Finally, some opponents of this legislation have expressed concern that it will affect nonunion as well as union employees. During consideration of H.R. 5 by the Education and Labor Committee, and amendment was adopted to clarify that the legislation only applies to union workers. Today again, I am joining the chairman of our committee in support of an important clarifying amendment that makes this point clear once and for all.

H.R. 5 is a relatively simple bill designed to eliminate abuses which have been perpetrated by a small minority of employers in recent years. It attempts to reestablish fairness and equity in the relationship of labor and management—a goal which will not result in an excessive number of strikes or provide our Nation's labor unions with an unfair advantage.

Rather, this bill has much to contribute to our Nation. It will help the working families whose lives would be shattered if their breadwinners lose their jobs simply for fighting for fair pay and fair benefits. It will help all of our Nation's wage earners, who would prefer reasonable wages and benefits to today's struggle against the ravages of the recession. And it will help our Nation's economy, which will benefit substantially from stable labor relations and more reliance on a highly experienced and highly skilled work force.

Sadly, the opponents of H.R. 5 see only a fight for who will get theirs today. But the proponents see a future of stable and cooperative

relations between labor and management, focused on long-term growth and prosperity. To me, the latter vision is more promising for our Nation. I am proud to cast my vote for this bill, which is in the best interests not only of workers, but of businesses, the economy, and our Nation.

Mr. ROEMER. Mr. Chairman, I rise in support of H.R. 5, the Workplace Fairness Act, which bans the hiring of permanent replacements for workers engaged in economic strikes.

When Congress passed the National Labor Relations Act in the 1930's, it guaranteed the right of workers to organize, to join unions, and to strike without fear of reprisal by their employers. In recent years, however, the right of employees to strike when they are unable to reach a collective-bargaining agreement with employers has been undermined because employers are permitted to hire permanent replacements.

Under current law, employees are unfairly disadvantaged in the collective-bargaining process over economic issues because the employer is permitted to hire permanent replacement workers if there is a strike. However, striking employees may not be permanently replaced in a strike where unfair labor practices are at issue. In the case of an economic strike, striking employees who have been replaced do not have to be rehired when the strike is over—they are afforded only preferential consideration for positions that become vacant in the future.

In very recent times, those employees who exercised their right to strike have been permanently replaced after years of loyal service with an employer. They expected that their jobs would continue after the strike had been settled and that their jobs would be protected under the National Labor Relations Act. Instead, they face financial ruin and other personal hardships, both now and for the future. The devastating consequences borne by these employees can extend to jeopardizing their homes because they are unable to make their mortgage payments. The personal and emotional stresses have led in some cases to the breakup of employees' families. Strikes can adversely impact local communities as well. Irreparable anger among strikers, permanent replacements, and the company can threaten to destroy a community long after a strike has been settled.

Studies show that, in the past decade, employers have increasingly utilized the right to hire permanent replacements. This fact is highlighted by findings published by the General Accounting Office [GAO] which demonstrate that since 1985, employers have used or have threatened to use permanent replacements in one out of every three strikes in this country. Thus H.R. 5 is needed to restore an emerging imbalance in labor-management relations. Permitting employers to hire replacement workers on a permanent basis, in the event of an economic strike, is tantamount to discharging or firing employees for exercising their lawful right to strike if they are unable to reach an agreement in the collective-bargaining process.

I recognize that the business community has concerns about this legislation, Mr. Chairman, and that nonunion companies, in particular, are worried that this bill will apply to and severely impact them. I listened to these concerns and wrote a letter to Chairman Ford urging him to incorporate some clarifications and changes in the legislation. In response to these views and other Members' concerns, the committee incorporated an amendment, which I supported, to clarify that H.R. 5 does not apply to nonunion companies, which includes most small businesses.

It is my view that the abolition of hiring permanent replacement workers will not be an incentive for employees to strike more frequently. Aside from the economic disincentive of lost wages and benefits, there is the emotional uncertainty of not knowing how long the strike will last or when life savings will be depleted. Furthermore, a prohibition of permanent replacements will not ensure that a given union will prevail over management in an economic strike.

Workers do not strike frivolously or because they want to. They do not risk everything for cavalier reasons. They do so because they feel that their futures must be protected, and they do so at considerable personal financial risk. Under this legislation, employers can continue to operate during a strike by transferring nonstriking employees, managers, and supervisors. They can subcontract work, and they may rely on stockpiled inventories. Most importantly, the bill does not affect an employer's right to use temporary workers during a strike. This bill simply ensures that the hiring of replacement workers is indeed temporary and subject to the return of striking employees.

Mr. Chairman, this legislation is about fairness in the collective-bargaining process and about restoring an even balance to labor-management relationships. We need to work toward an improved and communicative labor-management relationship. This is a question of our competitiveness, our productivity, and our economic strength. It is an important step in protecting a worker's fundamental right to strike, and I urge my colleagues to support this bill.

Mr. WOLPE. Mr. Chairman, I rise in strong support of H.R. 5, the Workplace Fairness Act of 1991. This bill is about two issues critical to America's economic future: Fairness and productivity.

Mr. Chairman, in 1935 Congress passed the National Labor Relations Act, in which a worker's right to strike was guaranteed. Since that time, beginning with the MacKay Radio decision in 1938, the courts have slowly eroded the right to strike, the only weapon workers have to fight for a better standard of living. In fact, under current law, it is illegal for an employer to fire a worker, but it is perfectly legal for an employer to permanently replace a striking employee. All we seek to do here today is restore the original intent of the law.

Mr. Chairman, over the last decade the purchasing power of middle-income working families has decreased. Over the last decade the tax burden on middle-income families has increased. At the same time, the courts have eroded the right to strike. President Reagan, by firing the air traffic controllers, signaled to U.S. employers that confrontation was an acceptable course of action. Add to that the wave of mergers and leveraged buy-outs that reduced workers to pawns in the game played by corporate profiteers, and there is only one conclusion: a worker's right to strike for a better standard of living has simply become the right to settle for a substandard wage, or quit.

Opponents of this legislation claim that it will destroy economic growth. I think they are dead wrong. It is my view that the key to American competitiveness in the 21st century is increased productivity, achieved through greater teamwork between labor and management. A few facts prove my point. First, Japan and Germany, our toughest competitors, have laws prohibiting permanent striker replacement. Both countries have higher average wages than the United States, and they also have far greater increases in productivity over the last 10 years. Second, in a 1986 study of 56 manufacturers, William Cooke of Wayne State University found that "employers that had tried teamwork—about half the sample—reported a 19-percent increase over the decade in the value added per employee. The combative employers reported a 15-percent decline," a statistic that includes Frank Lorenzo's Eastern Airlines, which is in liquidation, and Greyhound Bus Lines, which is bankrupt. Clearly, our competitors have already realized what these facts tell us: Permanent replacement is not only unfair; it is just plain bad business.

Mr. Chairman, H.R. 5 would close the loophole in the law by outlawing the permanent replacement of strikers, as well as preferential treatment for workers who cross picket lines during labor disputes. It would not affect nonunion workplaces, and it would only be applicable to strikes in which the union membership has voted to go on strike. This legislation would help to balance and stabilize labor-management relations, and strengthen the teamwork and cooperation in the workplace that are vital to our Nation's economic future.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. PETERSON].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. PETERSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 252, noes 174, not voting 7, as follows:

[Roll No. 212]

AYES—252

Abercrombie	Bevill	Chapman
Ackerman	Bilbray	Clay
Alexander	Boehlert	Clement
Anderson	Bonior	Coleman (TX)
Andrews (ME)	Borski	Collins (IL)
Andrews (NJ)	Boxer	Collins (MI)
Andrews (TX)	Brooks	Condit
Annunzio	Browder	Conyers
Applegate	Brown	Costello
Aspin	Bruce	Cox (IL)
Atkins	Bryant	Coyne
AuCoin	Bustamante	Cramer
Bacchus	Byron	Darden
Beilenson	Campbell (CO)	Davis
Bennett	Cardin	de la Garza
Bentley	Carper	DeFazio
Berman	Carr	DeLauro

Dellums	Kopetski	Poshard
Derrick	Kostmayer	Price
Dicks	LaFalce	Rahall
Dingell	Lantos	Rangel
Dixon	LaRocco	Reed
Donnelly	Laughlin	Regula
Dooley	Lehman (CA)	Richardson
Dorgan (ND)	Lehman (FL)	Rinaldo
Downey	Levin (MI)	Roe
Durbin	Levine (CA)	Roemer
Dwyer	Lewis (GA)	Rose
Dymally	Lipinski	Rostenkowski
Early	Lloyd	Roybal
Eckart	Long	Russo
Edwards (CA)	Lowey (NY)	Sabo
Edwards (TX)	Luken	Sanders
Engel	Manton	Sangmeister
Erdreich	Markey	Santorum
Espy	Martinez	Sarpalius
Evans	Mavroules	Savage
Fascell	Mazzoli	Sawyer
Fazio	McCloskey	Scheuer
Feighan	McCurdy	Schroeder
Fish	McDade	Schumer
Flake	McDermott	Serrano
Foglietta	McGrath	Sikorski
Ford (MI)	McHugh	Skaggs
Ford (TN)	McMillen (MD)	Skelton
Frank (MA)	McNulty	Slattery
Frost	Mfume	Slaughter (NY)
Gaydos	Miller (CA)	Smith (FL)
Gejdenson	Miller (OH)	Smith (IA)
Gephardt	Mineta	Smith (NJ)
Gilman	Mink	Solarz
Glickman	Moakley	Spratt
Gonzalez	Mollohan	Staggers
Gordon	Moody	Stallings
Gray	Moran	Stark
Green	Mrazek	Stokes
Guarini	Murphy	Studds
Hall (OH)	Murtha	Swett
Hamilton	Nagle	Swift
Harris	Natcher	Synar
Hayes (IL)	Neal (MA)	Tallon
Hayes (LA)	Neal (NC)	Tanner
Hefner	Nowak	Thornton
Hertel	Oakar	Torres
Hoagland	Oberstar	Torricelli
Hochbrueckner	Obey	Towns
Horn	Olin	Traficant
Horton	Olver	Traxler
Hoyer	Orton	Unsoeld
Hubbard	Owens (NY)	Vento
Hughes	Owens (UT)	Visclosky
Jacobs	Pallone	Volkmer
Jefferson	Panetta	Washington
Johnson (SD)	Parker	Waters
Johnston	Patterson	Waxman
Jones (GA)	Payne (NJ)	Weldon
Jones (NC)	Pease	Wheat
Jontz	Pelosi	Williams
Kanjorski	Penny	Wilson
Kaptur	Perkins	Wise
Kennedy	Peterson (FL)	Wolpe
Kennelly	Peterson (MN)	Wyden
Kildee	Petri	Yates
Kolter	Pickle	Young (AK)

NOES—174

Allard	Cooper	Gingrich
Anthony	Coughlin	Goodling
Archer	Cox (CA)	Goss
Armey	Crane	Gradison
Baker	Cunningham	Grandy
Ballenger	Dannemeyer	Gunderson
Barnard	DeLay	Hall (TX)
Barrett	Dickinson	Hammerschmidt
Barton	Doolittle	Hancock
Bateman	Dornan (CA)	Hansen
Bereuter	Dreier	Hastert
Bilirakis	Duncan	Hatcher
Bliley	Edwards (OK)	Hefley
Boehner	Emerson	Henry
Brewster	English	Herger
Broomfield	Ewing	Hobson
Bunning	Fawell	Holloway
Burton	Fields	Hopkins
Callahan	Franks (CT)	Houghton
Camp	Gallegly	Huckaby
Campbell (CA)	Gallo	Hunter
Chandler	Gekas	Hutto
Clinger	Geren	Hyde
Coble	Gibbons	Inhofe
Coleman (MO)	Gilchrest	Ireland
Combest	Gillmor	James
Jenkins	Nichols	Shuster
Johnson (CT)	Nussle	Sisisky
Johnson (TX)	Ortiz	Skeen
Kasich	Oxley	Slaughter (VA)
Klug	Packard	Smith (OR)
Kolbe	Paxon	Smith (TX)
Kyl	Payne (VA)	Snowe
Lagomarsino	Pickett	Solomon
Lancaster	Porter	Spence
Leach	Pursell	Stearns
Lent	Quillen	Stenholm
Lewis (CA)	Ramstad	Stump
Lewis (FL)	Ravenel	Sundquist
Lightfoot	Ray	Tauzin
Livingston	Rhodes	Taylor (MS)
Lowery (CA)	Ridge	Taylor (NC)
Machtley	Riggs	Thomas (CA)
Marlenee	Ritter	Thomas (GA)
Martin	Roberts	Thomas (WY)
McCandless	Rogers	Upton
McCollum	Rohrabacher	Valentine
McCrery	Ros-Lehtinen	Vander Jagt
McEwen	Roth	Vucanovich
McMillan (NC)	Roukema	Walker
Meyers	Rowland	Walsh
Miller (WA)	Saxton	Weber
Molinari	Schaefer	Whitten
Montgomery	Schiff	Wolf
Moorhead	Schulze	Wylie
Morella	Sensenbrenner	Young (FL)
Morrison	Shaw	Zeliff
Myers	Shays	Zimmer

NOT VOTING—7

Boucher	Michel	Yatron
Kleczka	Sharp	
Matsui	Weiss	

□ 1737

Mr. McDADE changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended, made in order as original text under the rule.

The amendment in the nature of a substitute, as amended, made in order as original text under the rule was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

□ 1740

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. LEVIN of Michigan, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, pursuant to House Resolution 195, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the amendment in the nature of a substitute made in order under the rule adopted by the Committee of the Whole? If not, the question is on the amendment in the nature of a substitute.

The amendment in the nature of a substitute was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. GOODLING

Mr. GOODLING. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. GOODLING. Mr. Speaker, I oppose the bill.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Goodling moves to recommit the bill (H.R. 5) to the Committee on Education and Labor.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GOODLING. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 182, not voting 5, as follows:

[Roll No. 213]

AYES—247

Abercrombie	Collins (MI)	Frank (MA)
Ackerman	Condit	Frost
Alexander	Conyers	Gaydos
Anderson	Costello	Gejdenson
Andrews (ME)	Cox (IL)	Gephardt
Andrews (NJ)	Coyne	Gilman
Andrews (TX)	Cramer	Glickman
Annunzio	Darden	Gonzalez
Applegate	Davis	Gordon
Aspin	de la Garza	Gray
Atkins	DeFazio	Green
AuCoin	DeLauro	Guarini
Bacchus	Dellums	Hall (OH)
Beilenson	Dicks	Hamilton
Bennett	Dingell	Harris
Bentley	Dixon	Hayes (IL)
Berman	Donnelly	Hayes (LA)
Bevill	Dooley	Hefner
Bilbray	Dorgan (ND)	Hertel
Boehlert	Downey	Hoagland
Bonior	Durbin	Hochbrueckner
Borski	Dwyer	Horn
Boucher	Dymally	Horton
Boxer	Early	Hoyer
Brooks	Eckart	Hubbard
Browder	Edwards (CA)	Hughes
Brown	Edwards (TX)	Jacobs
Bruce	Engel	Jefferson
Bryant	Erdreich	Johnson (SD)
Bustamante	Espy	Johnston
Byron	Evans	Jones (GA)
Campbell (CO)	Fascell	Jones (NC)
Cardin	Fazio	Jontz
Carper	Feighan	Kanjorski
Carr	Fish	Kaptur
Chapman	Flake	Kennedy
Clay	Foglietta	Kennelly
Clement	Foley	Kildee
Coleman (TX)	Ford (MI)	Kolter
Collins (IL)	Ford (TN)	Kopetski

Kostmayer	Oberstar	Sikorski
LaFalce	Obey	Skaggs
Lantos	Olin	Skelton
LaRocco	Olver	Slattery
Laughlin	Orton	Slaughter (NY)
Lehman (CA)	Owens (NY)	Smith (FL)
Lehman (FL)	Owens (UT)	Smith (IA)
Levin (MI)	Pallone	Smith (NJ)
Levine (CA)	Panetta	Solarz
Lewis (GA)	Parker	Solomon
Lipinski	Payne (NJ)	Staggers
Lloyd	Pease	Stallings
Long	Pelosi	Stark
Lowey (NY)	Penny	Stokes
Luken	Perkins	Studds
Manton	Peterson (FL)	Swett
Markey	Peterson (MN)	Swift
Martinez	Poshard	Synar
Mavroules	Price	Tanner
Mazzoli	Rahall	Thornton
McCloskey	Rangel	Torres
McDade	Reed	Torricelli
McDermott	Regula	Towns
McGrath	Richardson	Traficant
McHugh	Rinaldo	Traxler
McMillen (MD)	Roe	Unsoeld
McNulty	Roemer	Vento
Mfume	Rose	Visclosky
Miller (CA)	Rostenkowski	Volkmer
Mineta	Roybal	Washington
Mink	Russo	Waters
Moakley	Sabo	Waxman
Mollohan	Sanders	Weldon
Moody	Sangmeister	Wheat
Moran	Santorum	Williams
Mrazek	Sarpalius	Wilson
Murphy	Savage	Wise
Murtha	Sawyer	Wolpe
Nagle	Scheuer	Wyden
Natcher	Schroeder	Yates
Neal (MA)	Schumer	Young (AK)
Nowak	Serrano	
Oakar	Sharp	

NOES—182

Allard	Gibbons	McCrery
Anthony	Gilchrest	McCurdy
Archer	Gillmor	McEwen
Armey	Gingrich	McMillan (NC)
Baker	Goodling	Meyers
Ballenger	Goss	Miller (OH)
Barnard	Gradison	Miller (WA)
Barrett	Grandy	Molinari
Barton	Gunderson	Montgomery
Bateman	Hall (TX)	Moorhead
Bereuter	Hammerschmidt	Morella
Bilirakis	Hancock	Morrison
Billey	Hansen	Myers
Boehner	Hastert	Neal (NC)
Brewster	Hatcher	Nichols
Broomfield	Hefley	Nussle
Bunning	Henry	Ortiz
Burton	Herger	Oxley
Callahan	Hobson	Packard
Camp	Holloway	Patterson
Campbell (CA)	Hopkins	Paxon
Chandler	Houghton	Payne (VA)
Clinger	Huckaby	Petri
Coble	Hunter	Pickett
Coleman (MO)	Hutto	Pickle
Combest	Hyde	Porter
Cooper	Inhofe	Pursell
Coughlin	Ireland	Quillen
Cox (CA)	James	Ramstad
Crane	Jenkins	Ravenel
Cunningham	Johnson (CT)	Ray
Dannemeyer	Johnson (TX)	Rhodes
DeLay	Kasich	Ridge
Derrick	Klug	Riggs
Dickinson	Kolbe	Ritter
Doolittle	Kyl	Roberts
Dornan (CA)	Lagomarsino	Rogers
Dreier	Lancaster	Rohrabacher
Duncan	Leach	Ros-Lehtinen
Edwards (OK)	Lent	Roth
Emerson	Lewis (CA)	Roukema
English	Lewis (FL)	Rowland
Ewing	Lightfoot	Saxton
Fawell	Livingston	Schaefer
Fields	Lowery (CA)	Schiff
Franks (CT)	Machtley	Schulze
Gallegly	Marlenee	Sensenbrenner
Gallo	Martin	Shaw
Gekas	McCandless	Shays
Geren	McCollum	Shuster
Sisisky	Sundquist	Vucanovich
Skeen	Tallon	Walker
Slaughter (VA)	Tauzin	Walsh
Smith (OR)	Taylor (MS)	Weber
Smith (TX)	Taylor (NC)	Whitten
Snowe	Thomas (CA)	Wolf
Spence	Thomas (GA)	Wylie
Spratt	Thomas (WY)	Young (FL)
Stearns	Upton	Zeliff
Stenholm	Valentine	Zimmer
Stump	Vander Jagt	

NOT VOTING—5

Kleczka	Michel	Yatron
Matsui	Weiss	

□ 1810

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KLECZKA. Mr. Speaker, due to a recent 4-day hospitalization, I was unavoidably absent from rollcall votes 209 to 213. Had I been present, I would have voted in the following manner:

On ordering the previous question for the rule on H.R. 5, I would have voted "aye;" rollcall No. 209.

On adoption of the rule (H. Res. 195), I would have voted "aye;" rollcall No. 210.

On the Goodling substitute to H.R. 5, I would have voted "no;" rollcall No. 211.

On the Peterson substitute to H.R. 5, I would have voted "aye;" rollcall No. 212.

On final passage of H.R. 5, I would have voted "aye," rollcall No. 213.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5, WORKPLACE FAIRNESS ACT

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, the Clerk be authorized to make corrections in section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending H.R. 5, the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on H.R. 5, the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

VACATION OF SPECIAL ORDER AND REQUEST FOR SPECIAL ORDER

Mr. BURTON of Indiana. Mr. Speaker, I ask unanimous consent that my special order for 60 minutes today be vacated, and I ask unanimous consent that I be permitted to address the House for 5 minutes.

The SPEAKER pro tempore (Mr. HUTTO). Is there objection to the request of the gentleman from Indiana?

There was no objection.

THE AIDS PANDEMIC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, one of the biggest scourges to hit the United States, to face our society in our lifetimes, has been the AIDS pandemic. One of the things I have been talking about for the past 5 years is the need to have universal testing or routine testing for the population of this country.

The reason I have said that time and again, Mr. Speaker, is because the incubation period for the AIDS virus is between 2 and 10 years. Because of that incubation period, people who look healthy can communicate this disease to other people, without them knowing they even have it; certainly the people they come in contact with, not knowing the person they are with has the disease.

We have suggested that there were many, many ways this disease could be transmitted. The Centers for Disease Control in Atlanta, and for the former Surgeon General, Everett Koop, and others have said that no, the only way a person could get the AIDS virus was through drug contact and using needles intravenously, and a person could get it through sexual contact, and a person could get it through almost no other way.

The fact of the matter is that we are finding out day in and day out, these preconceived ideas in these categorical statements that have been made 4 and 5 years ago were and are incorrect.

As a matter of fact, we found out just recently that a young lady in Florida contracted the AIDS virus from her dentist. The patient's name is Kimberly Bergalis, and even though the dentist used protective gear, including rubber gloves, masks, and so forth. Because of that, there has been a hue and cry across this country by people saying that they wanted to know if their doctor or their dentist or their health care professional had the AIDS virus.

People have been afraid to go visit their health care professional because they felt they might be exposed to the AIDS virus, and they wanted to know before any invasive procedure was done, whether or not that health care

professional has the AIDS virus. For that reason, the gentleman from California [Mr. DANNEMEYER], myself, and others, have cosponsored legislation which would mandate the testing of all health care professionals in this country, and it would further mandate that those health care professionals, if they tested positive for AIDS HIV, that they would be compelled by law to tell their patients that they had that disease, and their patients could then decide whether or not they wanted that particular health care professional to do invasive procedures on them.

That was something that would be mandated by law. We have found that the AMA has said that they wanted it to be voluntary. I do not believe that goes far enough, Mr. Speaker. I think we need to go much further than that. It needs to be mandatory.

Today, the Secretary of Health and Human Services, Mr. Sullivan, released a statement from his office requesting that all health care professionals be tested. Not mandating, but requesting. I want to read one little paragraph from his letter. He said,

Our recommendations state that dentists, physicians, and other health care workers who perform exposure-prone procedures should find out their HIV and hepatitis B status. Any who are infected should not participate in such procedures unless they have obtained permission and guidance from special review committees which will require, at minimum, the potential patient be informed of the worker's HIV or hepatitis B status.

This is a step in the right direction. I commend Mr. Sullivan for doing this, but it is not enough. Ninety-five percent of the people in this country when polled recently, said that they want to know if their health care professional has the AIDS virus. They want to know so they can protect themselves and their families. I still believe that we must pass legislation in this body or have Health and Human Services and the Centers for Disease Control mandate that doctors be tested, dentists be tested, on a regular basis, as well as health care professionals.

□ 1820

We need to do that so that the public will be notified that they may be exposed to the AIDS virus if they go to a particular health care professional.

In addition to that, the health care professional has a right to know if his patient has the AIDS virus so they can take every single possible precaution so that they will not contract that deadly disease, which is almost 100 percent fatal, in fact it is 100 percent fatal.

So what we are heading toward is something I talked about 5 years ago, and that is universal testing in America for the AIDS virus. Doctors need to let patients know they have the virus.

The doctor needs to know if the patient and should know if the patient has the virus. So what we are heading for is universal testing.

I urge my colleagues to take a serious look at the legislation that the gentleman from California [Mr. DANNEMEYER] and I are sponsoring.

WHO'S REALLY FOR TAX FAIRNESS?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky [Mr. BUNNING] is recognized for 5 minutes.

Mr. BUNNING. Mr. Speaker, "what has happened once, will invariably happen again."

Abraham Lincoln said that in December 1839, over 140 years ago, when addressing the Illinois House of Representatives. That quote is still relevant today as we debate the so-called issue of tax fairness.

Every year since I was elected to this body, I have heard the majority screaming about tax fairness. We have even considered and adopted some measures that were passed in the name of tax fairness.

Unfortunately, it always seems that when we pass tax fairness measures, it is middle America that suffers.

The most recent attempt by the Congress at tax fairness was the luxury taxes included in last year's budget mess.

Those who proposed the taxes were delighted that we were finally going to sock it to the rich and make those folks pay for their expensive toys.

Well guess what? What happened once, happened again. The luxury tax is doing what it was supposed to do—it is putting the hurt on the American taxpayer alright, but it is the working middle class—not the rich—who are being hurt.

According to a recent study by Temple, Baker & Sloane the luxury tax on automobiles has created a permanent drop in demand of at least 20 percent for vehicles priced over $30,000.

This drop in sales will lead to a $71 million loss in revenues to the Federal Government in 1991 alone. States will lose $64.5 million in sales tax revenue.

A drop in sales means far more, however, than a loss of revenues to the Government. It means a drop in production and a loss of real jobs in America.

It is estimated that over 3,000 people in the automotive sales industry will lose their jobs this year because of the luxuary tax.

No estimates are available yet for the car manufacturers and their related industries.

Suffice it to say that the luxury tax may be an annoyance to a handful of rich people, but it has been devastating to the working class person associated with the automobile industry who are losing their jobs.

The same thing has happened to America's boat manufacturers with the luxury tax on boats. Industry experts estimate that the tax will contribute to a net loss of about 19,000 blue-collar manufacturing jobs and bankruptcy for countless small businessmen.

Now, from the same economic geniuses who brought you the luxury tax on cars and boats, comes a line of Presidential wannabees who are screaming that what we need is more tax fairness.

But what exactly is the so-called tax fairness that we wannabe Presidential caucus wants to give the middle class.

The main idea is to supposedly raise taxes on the well-to-do by creating a new 35 percent bracket for adjusted gross incomes of more than around $130,000 and putting an additional 11 percent surtax on incomes over $250,000.

The wannabee proposal is based upon the incorrect premise that those in the top tax bracket are not paying their fair share of taxes.

Since the Reagan tax cut lowered the top rate from 70 percent to 33 percent, the top 1 percent of the American taxpayers have paid more in taxes.

In 1981, with a top statutory rate of 70 percent, the top 1 percent of all taxpayers paid 17.6 percent of all income taxes collected.

In 1988, with a top statutory rate of 28 percent, the top 1 percent of all taxpayers paid 27.5 percent of all income taxes collected.

The average income tax payment of the top 1 percent also rose in that time frame from $68,725 to $104,008.

Look through the rhetoric of the Presidential wannabee caucus and you will see that they want us to believe that the American people are not being taxed enough.

The wannabees know its a lot of fun to bash the rich and it is a lot of fun to soak the rich. Playing on jealousy and taking advantage of envy has always been a favorite political strategy of this group.

But the bottom line is that soak-the-rich is not very honest and certainly not very productive.

It is not a matter of tax fairness. It is a matter of job fairness.

The wannabees are playing the worst kind of political game—class warfare for political profit.

The big losers will not be the wealthy. The most they lose is a couple per cent of their income.

The big loser, if we raise taxes on the top taxpayers, won't be the upper income taxpayers at all. The big losers will be the half million Americans who lose the opportunity to hold a job.

They lose it all.

TRIBUTE TO FRANK MOORE OF CARTERSVILLE, GA, BARTOW COUNTY COMMISSIONER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. DARDEN] is recognized for 5 minutes.

Mr. DARDEN. Mr. Speaker, today I rise to pay tribute to Frank Moore of Cartersville, GA, who served as sole Bartow County commissioner until his death on July 6.

Commissioner Moore will long be remembered by members of the Cartersville community as a dedicated and responsible Bartow County commissioner. He was a leader to the young and old, and worked diligently in his position to enhance and encourage better services to the area. It was always a pleasure to work with Commissioner Moore on projects of interest to Bartow County, and I share the feelings of many Cartersville residents when I say I will surely miss him.

Commissioner Moore was first elected Bartow County commissioner in 1980. He was a member of First Baptist Church of Cartersville and the John W. Akin Masonic Lodge. He was past president of the Association of County Commissioners of Georgia, and was active in Little League programs in Bartow County through the years. Commissioner Moore served on the board of directors for the Georgia Department of Community Affairs, and was active in numerous community programs in Cartersville and Bartow County.

He is survived by his wife, Mary Lanier Moore; daughter and son-in-law, Melinda and Danny Gilreath, Cartersville; daughter, Vali Moore, Cartersville; grandson, Tyler Gilreath; parents, E.P. and Beulah Moore, Cartersville; sister, Annie Lou Cato, Mableton; brother Robert Moore, Emerson; and several nieces and nephews.

Mr. Speaker, I would also like to share with my distinguished colleagues a story in Cartersville's the Daily Tribune News which nicely profiles Commissioner Moore's political career. Excerpts of the article follow:

The three-term commissioner, first elected in 1980, last won re-election in 1988. Prior to his election, he had served as Bartow County clerk.

Commissioner Moore, who had an open ear and door to all Bartow County residents, will be remembered in the community for many reasons—one of which is the new county administration building, currently under construction, that will bear his name.

The county is currently undergoing a major building program with the construction of five facilities, administration building, jail, two senior citizens facilities and a health department, which were all spearheaded by the commissioner.

Moore was an advocate for both the youth and elderly residents, having been a leader in the Little League organization on the local and at higher levels, as well as developing facilities for senior citizens in the community.

He served as an officer, including that of president, of the Association of County Commissioners of Georgia.

Along with the physical changes being seen in the county as a result of the commissioner's leadership, the county underwent other changes, including the adoption of a housing ordinance and adoption of the county's land use map and zoning ordinance.

Moore, who said on numerous occasions that he had the best interest of Bartow County at heart at all times, lead a successful effort to institute the changes deemed necessary.

In addition, he endorsed the establishment of an ordinance allowing the selling of malt beverages and wines, worked toward updating of county services, as well as making those and other services available to more residents throughout the county.

Mr. Speaker, commissioners set the highest standards for honesty and competence in public service. He was totally devoted to the people of Bartow County and to his loyal friends and family. His record as a public servant is one we should all seek to emulate.

THE GORE-DOWNEY TAX PROPOSAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. DELAY] is recognized for 5 minutes.

Mr. DELAY. Mr. Speaker, I want to continue the discussion started by my great friend, the gentleman from Kentucky, about the so-called tax fairness issue that is becoming more and more discredited every day that goes by. I want to do it through the Working Family Tax Relief Act of 1991, which would replace the personal exemption for children with an $800 tax credit. Sounds good. According to the CBO, this bill would provide $23 billion in tax relief to 35 million low- and middle-income families. In order to pay for this tax cut, the Gore-Downey bill would raise the top income tax rate to 35 percent, impose an 11 percent surcharge on families with incomes over $250,000, and increase the alternative minimum tax to 29 percent. The CBO projects that these tax increases would only affect the richest 6 million families.

According to Senator GORE and Representative DOWNEY, the rich no longer pay a fair share of taxes. They reach their dubious conclusion by pointing out that in 1977 the richest 1 percent of taxpayers paid an effective tax rate of 35½ percent. Under current law, they claim the top 1 percent will only pay 29.3 percent in 1992. Of course, they offer no proof that the 1977 rate was any fairer than the 1992 rate.

Presumably, raising taxes on the rich would pay for tax cuts for everyone else. However, one hardly needs to raise taxes on the rich in order to justify cutting taxes. In 1977, the Federal Government collected $356 billion in taxes, an amount equal to 18.4 percent of our gross national product. In 1992, the Federal Government is expected to collect $1,170,000,000,000 in taxes, an amount equal to 19½ percent of our gross national product. Reducing the 1992 tax burden back to its 1977 level would require a $86-billion tax cut. That is nearly three times the amount proposed by Senator GORE and Representative DOWNEY.

Of course, the Gore-Downey bill is not designed to reduce the 1992 tax burden back to its 1977 level. Its purpose is to make the rich pay a greater share of the 1992 tax burden.

While Senator GORE and Representative DOWNEY are quick to point out the declining tax rates of the rich, they conveniently ignore the fact that the rich are paying more taxes than ever before. In 1981, the top 1 percent of taxpayers paid 17.6 percent of all the income taxes collected by the Government.

□ 1830

By 1988, the top 1 percent paid 27.5 percent of all the income taxes collected. Over this same period, the average tax payment of top 1 percent increased from $68,752 to $104,008, as measured in constant 1988 dollars.

Just as cutting tax rates increased the share of taxes paid by the rich, raising tax rates will reduce the share of taxes paid by the rich. If total Federal revenues are to be maintained at the current level, other taxpayers will have to make up the difference. If the Gore-Downey bill reduced the share of taxes paid by the rich to its 1977 level, low and middle income taxpayers would have to pay an additional $54 billion in 1992.

Rather than addressing the real problem facing American families—high taxes—the Gore-Downey bill sets its sights on promoting tax fairness. However, this is a very phony issue. The truth is raising taxes on the rich will produce little, if any, additional revenue. When the tax hikes on the rich fail to deliver the promised revenue, the deficit will rise and Congress will claim it has no other choice but to increase taxes on the middle class. Taxpayers will be far better off without the Gore-Downey version of tax relief, and the Democrats' idea of tax fairness.

PERSPECTIVE ON WORLD GRAIN PRICES

The SPEAKER pro tempore (Mr. HUTTO). Under a previous order of the House, the gentleman from Nebraska [Mr. BEREUTER] is recognized for 5 minutes.

Mr. BEREUTER. Mr. Speaker, undoubtedly many Members from grain-producing States have been contacted by constituents who are very concerned about the exceptionally low market price of corn and wheat. Accordingly, this Member has organized a number of statistics from the U.S. Department of Agriculture and the Congressional Research Service that help to explain some of the important reasons why grain prices remain at such low levels.

While investigating this question, two overriding factors emerged which help explain current levels of grain prices:

First, during 1990, every major grain producing region—the U.S.S.R., Eastern Europe, the European Community, Canada, China, and the United States—enjoyed exceptionally good yields.

Total world production of grains was 1.76 billion metric tons in the year 1990/91. In 1988/89, total world production of

grains was 1.56 billion metric tons. While the 200 million metric tons [mmt] difference may not appear great in relative terms, total world trade in grains is approximately the same amount as the difference in production during these 2 years—200 mmt; 209 mmt in 1989/90 and 188 mmt this year. Due to the large crop last year, world demand for grain imports declined approximately 10 percent, or by 20 mmt. The United States is the world's largest grain exporter and as a result has felt more acutely the contraction in world grain trade.

The second reason for current lower grain prices is the fact that Soviet wheat and coarse grain imports will decrease from 38.5 mmt last year to an expected 26 mmt this year. The U.S.S.R. is the world's largest grain buyer, ordinarily accounting for 20 percent of the world's purchases. This year they are expected to purchase substantially less—approximately 12 percent of world exports as contrasted to the usual 20 percent.

This decrease in purchases is largely due to the Soviets lack of hard currency, which they must have to continue purchasing commodities on a cash basis, as they have since the early 1970's. For all practical purposes, without the credit guarantees granted by the United States, the European Community, and others, the U.S.S.R. today would not be able to purchase agricultural commodities.

Now, let's look at some additional information related to grain prices.

In the 1989/90 crop year, 29 percent of corn sold by U.S. farmers was exported; that is, nearly 1 out of every 3 bushels. This year, only 21 percent—or 1 out of 5 bushels, of corn sold by farmers will be exported. Over the past 5 years corn exports as a percentage of total corn sales averaged 24 percent. U.S. feed grain exports are expected to decrease by 25 percent this year, with nearly all the decrease in corn.

In the 1989/90 crop year, 55 percent of wheat sold by farmers was exported. This year, only 44 percent of wheat sold by farmers was exported. Over the past 5 years average wheat exports to producer sales was 52 percent. The most important point to gain from these statistics is that, whether some people are willing to admit it or not, grain prices are largely export driven.

World supply and demand conditions and the trade policies of other nations have a direct impact on the price that U.S. farmers receive for their products. Additionally, it must be noted that the value of the U.S. dollar has also been rising recently, thereby partially offsetting any increase in world prices.

One bright spot for producers in the world supply-demand situation is that world stocks-to-use ratios are at historically low levels. This means that, worldwide, a relatively small amount of grain is in storage and readily available to meet the needs of world consumers. This tightness in the market gives expectations of rising prices in the future.

One other very important factor to consider in viewing world grain markets are the long-term, cumulative actions of the European Community, or the EC. Before 1980, the EC imported approximately 30 mmt of agricultural commodities annually. In amazing contrast, this year, they are expected to export around 33 mmt, approximately the same amount as they exported last year. This is an absolute difference and increase of 63 mmt in a world market of only 200 mmt. U.S. trade negotiators have long decried the EC's use of export and other subsidy and protection policies that distort world agricultural trade. Viewed in this perspective, the magnitude of the distortion caused by the EC, and the burden it forces U.S. farmers to bear, is significant.

The dramatic production change in the EC occurred only because of their use of massive, trade-distorting internal subsidies. Wheat producers in the EC are provided with incredible subsidies, which are two to three times higher than the U.S. target price. This excess production is then dumped on world markets with the use of export subsidies. During the past year, the EC has very aggressively used export subsidies, often far in excess of $100/metric ton (mt) of wheat, driving world wheat prices below $100/mt.

It should also be noted that, in a sharp turnaround, European Community subsidies have so narrowed the wheat-corn price spread that wheat has at times been a cheaper feed than corn during the past year. In sum, EC export bonuses for wheat have been so large that they have caused substantial weakness in feed grain prices by making wheat a ready substitute for corn. Since the U.S. consistently supplies over 75 percent of the world's corn exports, these EC subsidies for wheat have a disproportionately severe impact on the price of corn in the United States.

These subsidies also explain why EC bulk commodity exports remained constant during the past year and, accordingly, why U.S. bulk exports have decreased markedly. Due to very aggressive EC use of subsidies, the contraction in world grain trade has been absorbed almost entirely by the United States. The EC, Canada, and Australia are not expected to suffer notable reductions in their exports as the United States will.

These statistics illustrate how important a successful conclusion of the current Uruguay round of GATT negotiations is to American agriculture. The benefits that will accrue to United States farmers if the trade-distorting subsidies of the European Community can be reduced are truly significant.

President Bush is to be commended for making the EC trade-distorting agricultural policies a top priority U.S. concern of the current G–7 talks in London. The EC and its member countries should know that a great many Members of Congress continue to urge the U.S. Trade Representative, Ambassador Carla Hills, to hang very tough on insisting on those EC agricultural reforms. Yes, increased trade for services and manufactured products is an obvious benefit from a successful Uruguay round. But the European businesses interests and consumers must know that the EC stands basically alone in their intransigence on resisting reforms in their trade-distorting agricultural policy. They stand against the developing nations of the world and against their agricultural export competitors. The EC must come to their senses and do what is responsible to protect and enhance the world trade system.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WEISS (at the request of Mr. GEPHARDT) for today and tomorrow, on account of medical reasons.

Mr. MICHEL (at the request of Mr. CRANE) for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. FRANK of Massachusetts) to revise and extend their remarks and include extraneous material:)

Mr. BONIOR, for 5 minutes, today.

Mr. DARDEN, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. MILLER of California, for 60 minutes, on July 30.

(The following Members (at the request of Mr. BURTON of Indiana) to revise and extend their remarks and include extraneous material:)

Mr. WOLF, for 5 minutes each day, on July 25 and 26.

Mr. BUNNING, for 5 minutes, on July 17.

Mr. DELAY, for 5 minutes, on July 17.

Mr. BEREUTER, for 5 minutes, on July 17.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. LENT, immediately following Mr. RITTER on H.R. 5, in the Committee of the Whole today.

(The following Members (at the request of Mr. BURTON of Indiana) and to include extraneous material:)

Mr. BROOMFIELD.
Ms. ROS-LEHTINEN in three instances.
Mr. GILMAN in two instances.
Mr. MCGRATH.
Mr. ROTH in two instances.
Mr. MACHTLEY.
Mr. SCHULZE.
Mr. OXLEY.
Mr. MOORHEAD.
Mr. SANTORUM in two instances.
Mr. HOLLOWAY.

The following Members (at the request of Mr. FRANK of Massachusetts) and to include extraneous matter:

Mr. NOWAK.
Mr. WAXMAN.
Ms. SLAUGHTER of New York.
Mr. TOWNS.
Mr. MILLER of California.
Mr. APPLEGATE.
Mr. HAMILTON.
Mr. TRAXLER.
Mr. MARKEY.
Mr. LEHMAN of Florida.
Mr. TRAXLER.
Mrs. BOXER.
Mr. ENGEL.
Mr. REED.
Mr. ROYBAL.
Mr. EDWARDS of California.
Mr. CARDIN.
Mr. GUARINI.
Mr. CAMPBELL of Colorado.
Mr. HERTEL.
Mr. CLEMENT.
Mr. SMITH of Florida.
Mr. BRYANT.
Mr. VENTO.
Mr. KILDEE.
Mr. STARK.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 985. An act to assure the people of the Horn of Africa the right to food and the other basic necessities of life and to promote peace and development in the region; to the Committee on Foreign Affairs.

ENROLLED JOINT RESOLUTION

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker.

H.J. Res. 279. Joint resolution to declare it to be the policy of the United States that there should be a renewed and sustained commitment by the Federal Government and the American people to the importance of adult education.

ADJOURNMENT

Mr. BEREUTER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 39 minutes p.m.), the House adjourned until tomorrow, Thursday, July 18, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1756. A letter from the Director, the Office of Management and Budget, transmitting a report on revised estimates of the budget receipts, outlays, and budget authority for fiscal years 1991–96, pursuant to 31 U.S.C. 1106(a) (H. Doc. No. 102–115); to the Committee on Appropriations and ordered to be printed.

1757. A letter from the Board of Governors of the Federal Reserve System, transmitting its monetary policy report; to the Committee on Banking, Finance and Urban Affairs.

1758. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9–62, "Uniform Disposition of Unclaimed Property Act of 1980 Amendment Act of 1991," and report, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1759. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9–63, "Fire Company Staffing Act of 1991," and report, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1760. A letter from the Secretary, Department of Health and Human Services, transmitting the annual report regarding the types of projects and activities funded under the Drug Abuse Prevention Program for Runaway and Homeless Youth, pursuant to 42 U.S.C. 11822; to the Committee on Education and Labor.

1761. A letter from the Secretary of Energy, transmitting the 14th report on enforcement actions and comprehensive status of Exxon and stripper well oil overcharge funds for the second quarter, fiscal year 1991; to the Committee on Energy and Commerce.

1762. A letter from the Secretary of Health and Human Services, transmitting the report on the long-term effects of infant formulas deficient in chloride; to the Committee on Energy and Commerce.

1763. A letter from the Acting Director, Defense Security Assistance Agency, transmitting the Department's proposed Letter(s) of Offer and Acceptance [LOA] to Spain for defense articles and services estimated to cost $251 million (Transmittal No. 91–38), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

1764. A communication from the President of the United States, transmitting a report on the status of efforts to obtain compliance by Iraq with the resolutions adopted by the United Nations Security Council, pursuant to Public Law 102–1 (H. Doc. No. 102–116); to the Committee on Foreign Affairs and ordered to be printed.

1765. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 5, United States Code, to include certain service as qualifying for certain moving expenses; to the Committee on Government Operations.

1766. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

1767. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

1768. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

1769. A letter from the Secretary, Department of the Interior, transmitting a report on mobilization of local equipment and presuppression needs, pursuant to Public Law 101–286, section 203(c)(2) (104 Stat. 175); to the Committee on Interior and Insular Affairs.

1770. A letter from the Administrator, General Services Administration, transmitting an informational copy of a lease prospectus, pursuant to 40 U.S.C. 606(a); to the Committee on Public Works and Transportation.

1771. A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to amend the Harmonized Tariff Schedule of the U.S. provisions implementing annex D of the Nairobi protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, and for other purposes; to the Committee on Ways and Means.

1772. A letter from the Physician Payment Review Commission, transmitting the Commission's latest report entitled, "Monitoring Access," pursuant to 42 U.S.C. 1395w–1(c)(1)(D); jointly, to the Committee on Energy and Commerce and Ways and Means.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CARDIN (for himself, Mr. WAXMAN, and Mrs. SCHROEDER)

H.R. 2922. A bill to amend the Public Health Service Act to establish an entitlement of States and certain political subdivisions of States to receive grants for the abatement of health hazards associated with lead-based paint, and to amend the Internal Revenue Code of 1986 to impose an excise tax and establish a trust fund to satisfy the Federal obligations arising from such entitlement; jointly, to the Committees on Energy and Commerce and Ways and Means.

By Mr. ANDREWS of Maine:

H.R. 2923. A bill to authorize the Small Business Administration to conduct a demonstration program to enhance the economic opportunities of startup, newly established, and growing small business concerns by providing loans and technical assistance through intermediaries; to the Committee on Small Business.

By Mr. BRYANT:

H.R. 2924. A bill to provide penalties for additional forms of credit and debit card fraud; to the Committee on the Judiciary.

By Mr. CAMPBELL of Colorado:

H.R. 2925. A bill to establish the Curecanti National Recreation Area in the State of Colorado as a unit of the National Park System, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. COSTELLO (for himself, Mr. POSHARD, Mr. GEPHARDT, and Mr. CLAY):

H.R. 2926. A bill to amend the act of May 17, 1954, relating to the Jefferson National Expansion Memorial to authorize increased funding for the East Saint Louis portion of the memorial, and for other purposes; to the Committee on House Administration.

By Mr. DE LUGO (for himself, Mr. MILLER of California, Mr. YOUNG of Alaska, Mr. SHARP, Mr. VENTO, Mr. LAGOMARSINO, Mr. MARKEY, Mr. MURPHY, Mr. RAHALL, Mr. WILLIAMS, Mrs. BYRON, Mr. GEJDENSON, Mr. KOSTMAYER, Mr. LEHMAN of California, Mr. RICHARDSON, Mr. DARDEN, Mr. VISCLOSKY, Mr. LEVINE of California, Mr. OWENS of Utah, Mr. LEWIS of Georgia, Mr. CAMPBELL of Colorado, Mr. DEFAZIO, Mr. FALEOMAVAEGA, Mr. JOHNSON of South Dakota, Mr. SCHUMER, Mr. JONTZ, Mr. HOAGLAND, Mr. JOHNSTON of Florida, Mr. LAROCCO, Mr. HANSEN, Mr. BLAZ, Mr. RHODES, Mr. GALLEGLY, Mr. SCHULZE, and Mr. TAYLOR of North Carolina):

H.R. 2927. A bill to provide for the establishment of the St. Croix, VI, Historical Park and Ecological Preserve, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. DERRICK (for himself, Mr. STAGGERS, Ms. SNOWE, Mr. STALLINGS, Mr. SKELTON, Mrs. BENTLEY, Mr. HAMMERSCHMIDT, Mrs. MEYERS of Kansas, Mr. HOUGHTON, Mr. DEFAZIO, Mr. SWETT, Mr. RICHARDSON, and Mr. VOLKMER):

H.R. 2928. A bill to direct the Secretary of Transportation to make appropriate arrangements with the Transportation Research Board of the National Academy of Sciences to conduct a study of special transportation services to health care facilities in rural areas; to the Committee on Public Works and Transportation.

By Mr. LEVINE of California (for himself, Mr. LEHMAN of California, and Mr. MILLER of California):

H.R. 2929. A bill to designate certain lands in the California desert as wilderness, to establish the Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. GEJDENSON:

H.R. 2930. A bill to amend the Arms Export Control Act to allow guarantees in connection with commercial sales of defense articles and services to NATO countries, Japan, Australia, New Zealand, and Israel; to the Committee on Foreign Affairs.

By Mr. HOBSON:

H.R. 2931. A bill to require State agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Department of Justice; to the Committee on the Judiciary.

By Mr. JOHNSON of South Dakota:

H.R. 2932. A bill to clarify eligibility under chapter 106 of title 10, United States Code, for educational assistance for members of the Selected Reserve; to the Committee on Armed Services.

By Mr. KILDEE:

H.R. 2933. A bill to amend the National School Lunch Act to extend through the fiscal year 1994 the pilot project relating to the provisions of all cash payments or all commodity letters of credit in lieu of entitlement commodities for school lunch programs; to the Committee on Education and Labor.

By Mr. MOODY:

H.R. 2934. A bill to expand the unemployment compensation benefits available to former members of the Armed Forces; to the Committee on Ways and Means.

By Ms. OAKAR:

H.R. 2935. A bill to designate the building located at 6600 Lorain Avenue in Cleveland, OH, as the "Patrick J. Patton U.S. Post Office Building"; to the Committee on Post Office and Civil Service.

By Mr. PRICE (for himself, Mr. BROWN, Mr. BOUCHER, Mr. VALENTINE, Mr. BOEHLERT, Mr. LEWIS of Florida, Mr. ROGERS, Mr. BROWDER, Mr. ESPY, Mr. FROST, Mr. JONES of North Carolina, Ms. KAPTUR, Mr. LANCASTER, Mr. PERKINS, Mr. ROE, Mr. SAWYER, Ms. SLAUGHTER of New York, and Mr. TOWNS):

H.R. 2936. A bill to establish programs at the National Science Foundation for the advancement of technical education and training in advanced technology occupations, and for other purposes; jointly to the Committee on Science, Space, and Technology, Education and Labor.

By Mr. ROTH:

H.R. 2937. A bill to regulate interstate commerce by providing for uniform treatment of selected product liability problems, and for other purposes; jointly, to the Committees on the Judiciary and Energy and Commerce.

By Mr. SERRANO (for himself, Mr. MILLER of California, and Mr. HAYES of Illinois):

H.R. 2938. A bill to establish a Teacher Opportunity Corps to enable paraprofessionals working in targeted schools to become certified teachers through part-time and summer study; to the Committee on Education and Labor.

By Mr. WALKER (for himself, Mr. LEWIS of Florida, Mr. BOEHLERT, Mr. RITTER, and Mr. HENRY):

H.R. 2939. A bill to encourage and enhance science and technology research and development in the U.S. motor vehicle industry, to encourage cooperation between the Federal Government and the domestic motor vehicle industry to increase U.S. competitiveness, and for other purposes; to the Committee on Science, Space, and Technology.

By Mr. YOUNG of Alaska (for himself, Mr. HORTON, Mr. ABERCROMBIE, Mrs. MINK, Mr. GILMAN, Mr. BURTON of Indiana, Mrs. MORELLA, Mr. MCMILLEN of Maryland, and Mr. HAYES of Illinois):

H.R. 2940. A bill to amend chapter 57 of title 5, United States Code, to provide that reimbursement for certain travel expenses related to relocation of Federal employees shall apply to all stations within the United States; to the Committee on Government Operations.

By Mr. CLEMENT (for himself, Mr. COOPER, Mr. DUNCAN, Mr. FORD of Tennessee, Mr. GORDON, Mrs. LLOYD, Mr. SUNDQUIST, Mr. TANNER, Mr. QUILLEN, Mr. ALEXANDER, Mr. ANTHONY, Mr. BARNARD, Mr. BARTON of Texas, Mrs. BENTLEY, Mr. BEVILL, Mr. BILIRAKIS, Mr. BLAZ, Mr. BLILEY, Mr. BREWSTER, Mr. BROOKS, Mr. BROWDER, Mr. BUNNING, Mr. BUSTAMANTE, Mr. CALLAHAN, Mr. CHANDLER, Mr. COBLE, Mr. CONDIT, Mr. COSTELLO, Mr. CRAMER, Mr. DARDEN, Mr. DERRICK, Mr. DWYER of New Jersey, Mr. EMERSON, Mr. ENGEL, Mr. ESPY, Mr. FROST, Mr. GILCHREST, Mr. GONZALEZ, Mr. GUARINI, Mr. HARRIS, Mr. HATCHER, Mr. HAYES of Louisiana, Mr. HOCHBRUECKNER, Mr. HUTTO, Mr. JACOBS, Mr. JONTZ, Mr. KANJORSKI, Mr. KASICH, Mr. KILDEE, Mr. KOLTER, Mr. LANTOS, Mr. LEHMAN of Florida, Mr. LENT, Mr. LEVIN of Michigan, Mr. LEWIS of California, Mr. LIPINSKI, Ms. LONG, Mr. MAVROULES, Mr. MCCLOSKEY, Mr. MCCRERY, Mr. MCDERMOTT, Mr. MCMILLEN of Maryland, Mr. MCNULTY, Mr. MONTGOMERY, Mr. MORAN, Mr. MORRISON, Mr. MURPHY, Mr. MURTHA, Mr. NATCHER, Mr. NEAL of Massachusetts, Mr. NICHOLS, Ms. NORTON, Ms. OAKAR, Mrs. PATTERSON, Mr. PAXON, Mr. PAYNE of Virginia, Mr. PAYNE of New Jersey, Mr. PERKINS, Mr. PICKETT, Mr. POSHARD, Mr. PURSELL, Mr. RAHALL, Mr. RAVENEL, Mr. ROBERTS, Mr. ROE, Mr. ROWLAND, Mr. ROYBAL, Mr. SANDERS, Mr. SAVAGE, Mr. SCHULZE, Mr. SERRANO, Mr. SKELTON, Mr. SLATTERY, Mr. SMITH of Florida, Mr. SPENCE, Mr. TALLON, Mr. TAUZIN, Mr. TAYLOR of Mississippi, Mr. TOWNS, Mr. TRAFICANT, Mr. WHITTEN, Mr. WOLF, Mr. OXLEY, Mr. SISISKY, Mr. ROGERS, Mr. FEIGHAN, Mr. MARTINEZ, Mr. HAMMERSCHMIDT, and Mr. LANCASTER):

H.J. Res. 305. Joint resolution to designate the month of October, 1991 as Country Music Month; to the Committee on Post Office and Civil Service.

By Mr. MILLER of California (for himself, Mr. JONES of North Carolina, Mr. KOSTMAYER, Mr. FRANK of Massachusetts, Mr. OWENS of Utah, Mr. STARK, Mr. DELLUMS, Mr. SERRANO, Mr. LIPINSKI, Ms. KAPTUR, Mr. JEFFERSON, Mr. FAZIO, and Mr. KENNEDY):

H.J. Res. 306. Joint resolution to designate the Port Chicago Naval Magazine as a National Memorial; to the Committee on Interior and Insular Affairs.

By Mr. OWENS of Utah (for himself, Mr. HOBSON, Mr. LEACH, and Mr. DYMALLY):

H.J. Res. 307. Joint resolution to designate 1991 as the "25th Anniversary Year of the Formation of the President's Committee on Mental Retardation"; to the Committee on Post Office and Civil Service.

By Mr. MILLER of Washington:

H. Con. Res. 183. Concurrent resolution concerning the cooperation of the People's Republic of China in efforts to obtain information regarding the status of members of the Armed Forces of the United States who served in the Korean and Vietnam conflicts; to the Committee on Foreign Affairs.

By Mr. VISCLOSKY (for himself, Mr. MURTHA, Mr. GAYDOS, Mr. REGULA, Mr. APPLEGATE, Mr. MOLLOHAN, Mrs. BENTLEY, Mr. NOWAK, Mr. OBERSTAR, Mr. RUSSO, Mr. ERDREICH, Mr. BRYANT, Mr. COYNE, Mr. JACOBS, Mr. JONTZ, Mr. MCCLOSKEY, Mr. MYERS of Indiana, Mr. ROEMER, and Mr. RAHALL):

H. Con. Res. 184. Concurrent resolution regarding the regulation of steel product imports into the United States from the Union of South Africa; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

231. By the SPEAKER: Memorial of the Legislature of the State of Nebraska, relative to a Hunger Relief Act; to the Committee on Education and Labor.

232. Also, memorial of the Legislature of the State of Texas, relative to the status of American service personnel in Southeast Asia; to the Committee on Government Operations.

233. Also, memorial of the Legislature of the State of Louisiana, relative to boat user fees; to the Committee on Merchant Marine and Fisheries.

234. Also, memorial of the Legislature of the State of Louisiana, relative to the improvement and maintenance of the Quachita River; to the Committee on Public Works and Transporation.

235. Also, memorial of the Legislature of the State of Main, relative to Social Security benefits; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 44: Mr. HUTTO and Mr. FISH.

H.R. 73: Mr. OBERSTAR, Mr. FALEOMAVAEGA, Mr. LIPINSKI, Mr. ROSE, Mr. JACOBS, Mr. SHAYS, Mr. SMITH of Oregon, Mr. OWENS of Utah, Mr. PICKETT, Mr. EMERSON, Mr. TAUZIN, Mr. SANDERS, Mr. BURTON of Indiana, Ms. SNOWE, Mrs. KENNELLY, Mr. GALLEGLY, Mr. SOLOMON, Mr. WISE, Mr. MORRISON, Mr. LAGOMARSINO, Mr. THOMAS of Georgia, Mr. ALEXANDER, Mr. WILLIAMS, Mr. ZELIFF, Mr. TAYLOR of North Carolina, Mr. STUDDS, Mr. COX of California, Mr. PORTER, Mr. REED, Ms. LONG, Mr. GILCHREST, Mr. HARRIS, Mr. ROBERTS, Mr. QUILLEN, Mr. STEARNS, Mr. BUSTAMANTE, Mr. PRICE, Mr. COLEMAN of Texas, Mr. MACHTLEY, Mr. DURBIN, Mr. DELLUMS, Mr. CLINGER, Mr. LEWIS of Florida, Mr. STUMP, Mr. DANNEMEYER, and Mr. JONES of North Carolina.

H.R. 74: Mr. SMITH of Florida, Mr. BERMAN, Mr. RAHALL, and Mr. STOKES.

H.R. 196: Mr. ESPY and Mr. MINETA.

H.R. 261: Mr. OXLEY, Mr. LAROCCO, Mr. LANCASTER, Mr. HARRIS, Mr. JOHNSTON of Florida, Mr. MURPHY, Mr. MURTHA, and Mr. UPTON.

H.R. 310: Mr. LEACH.

H.R. 311: Mr. HERGER.

H.R. 392: Mr. OLVER.

H.R. 393: Mr. PAYNE of New Jersey.

H.R. 431: Mr. WOLPE and Mr. STAGGERS.

H.R. 501: Mr. KENNEDY.

H.R. 516: Mr. MCNULTY, Mr. DYMALLY, and Mr. AUCOIN.

H.R. 534: Mr. SKEEN, Mr. BACCHUS, Mr. DOOLEY, Mr. VISCLOSKY, Mrs. KENNELLY, Mr. SANTORUM, Mr. CRAMER, Ms. ROS-LEHTINEN, Mr. BILIRAKIS, Mr. ACKERMAN, and Mr. GINGRICH.

H.R. 661: Mr. SHAW and Mr. BROOMFIELD.

H.R. 747: Mr. PURSELL, Mr. GOODLING, Mr. GORDON, Mr. JACOBS, Mr. GALLEGLY, Mr. VOLKMER, Mrs. JOHNSON of Connecticut, Mr. BURTON of Indiana, Mr. MURPHY, Mr. BAKER, Mr. HAMMERSCHMIDT, Mr. MCCRERY, Mr. FORD of Michigan, Mr. ANNUNZIO, Mr. JONES of Georgia, Mr. BROWDER, Mr. ESPY, Mr. NOWAK, Mr. EMERSON, Mr. SANGMEISTER, and Mr. STALLINGS.

H.R. 784: Mr. ROEMER.

H.R. 791: Mr. KOSTMAYER.

H.R. 809: Mr. JOHNSON of South Dakota.

H.R. 858: Mr. FIELDS, Mr. MARTIN, Mr. DORNAN of California, Ms. HORN.

H.R. 939: Mr. MACHTLEY.

H.R. 1004: Mrs. ROUKEMA.

H.R. 1092: Mr. HARRIS.

H.R. 1130: Mr. BILIRAKIS and Mr. POSHARD.

H.R. 1134: Mr. SCHIFF.

H.R. 1147: Mr. PETERSON of Florida, Mr. GIBBONS, and Mr. BORSKI.

H.R. 1200: Mr. SUNDQUIST.

H.R. 1234: Mr. SMITH of New Jersey.

H.R. 1239: Mr. JOHNSTON of Florida.

H.R. 1241: Mr. REGULA, Mr. HORTON, and Mr. WALSH.

H.R. 1277: Mr. CHAPMAN, Mrs. PATTERSON, Mr. POSHARD, Mr. JOHNSTON of Florida, Mrs. LOWEY of New York, and Mr. BRYANT.

H.R. 1300: Mr. DYMALLY and Mr. MAVROULES.

H.R. 1335: Mr. ROTH, Ms. DELAURO, Mr. DIXON, Mrs. LOWEY of New York, Mr. SOLARZ, Mr. SMITH of Florida, and Mr. BOUCHER.

H.R. 1344: Mr. MAZZOLI, Mr. BERMAN, and Mr. SANDERS.

H.R. 1355: Mr. ECKART, Mrs. JOHNSON of Connecticut, Mr. SOLOMON, Mr. DANNEMEYER, and Mr. HUNTER.

H.R. 1356: Mr. SANTORUM.

H.R. 1368: Mr. THOMAS of Georgia.

H.R. 1380: Mr. IRELAND.

H.R. 1417: Ms. PELOSI, Mr. MACHTLEY, Mr. SLAUGHTER of Virginia, Mr. COMBEST, and Mr. STEARNS.

H.R. 1423: Mr. PETERSON of Minnesota and Mr. TOWNS.

H.R. 1426: Mr. MFUME, and Mr. CARDIN.

H.R. 1450: Mr. BARRETT, Mr. NEAL of Massachusetts, and Ms. OAKAR.

H.R. 1468: Mr. HUNTER.

H.R. 1472: Mr. WHITTEN, Mr. KLUG, Mr. MCCURDY, Mr. ZIMMER, and Mr. WOLF.

H.R. 1481: Mr. GINGRICH and Mrs. ROUKEMA.

H.R. 1522: Mrs. VUCANOVICH, Mr. BONIOR, Mr. HAYES of Illinois, Mr. GUARINI, Mr. WASHINGTON, Mr. DELLUMS, Mr. CLAY, and Mr. OWENS of Utah.

H.R. 1551: Mr. HYDE.

H.R. 1554: Mr. KOLTER.

H.R. 1559: Mr. ANDERSON.

H.R. 1572: Mr. WALKER and Mr. MCDADE.

H.R. 1602: Mr. BROWN and Mrs. BOXER.

H.R. 1635: Mr. MARKEY.

H.R. 1664: Mrs. MINK, Mr. MCDERMOTT, Mr. DELLUMS, Mr. LEWIS of Georgia, Mr. POSHARD, Mr. JONTZ, Mr. SCHEUER, and Mr. JACOBS.

H.R. 1676: Mr. EMERSON.

H.R. 1704: Mr. ECKART, Mr. CONDIT, Mr. ANDERSON, and Mr. RAY.

H.R. 1723: Mr. STUDDS.

H.R. 1777: Mr. PETERSON of Florida and Mr. LEWIS of Georgia.

H.R. 1791: Mr. ESPY, Mr. BORSKI, and Mr. DOWNEY.

H.R. 1820: Mrs. MINK, Mr. JOHNSON of South Dakota, Mr. SLATTERY, Mr. MFUME, Mr. MARTINEZ, and Mr. LEWIS of Georgia.

H.R. 1853: Mr. DUNCAN.

H.R. 1860: Mr. PETERSON of Minnesota and Mr. NUSSLE.

H.R. 1885: Mr. SLATTERY and Mr. LAGOMARSINO.

H.R. 1969: Mr. GEREN of Texas.

H.R. 1987: Mr. MINETA, Mrs. UNSOELD, Mr. JONTZ, and Mr. TOWNS.

H.R. 2001: Mr. GORDON.

H.R. 2027: Mr. MACHTLEY.

H.R. 2046: Mr. LAGOMARSINO.

H.R. 2056: Mr. MATSUI.

H.R. 2234: Mr. STENHOLM and Mr. NEAL of North Carolina.

H.R. 2244: Mr. STUDDS and Mr. GONZALEZ.

H.R. 2299: Mr. YATES, Mr. EVANS, and Mr. LEWIS of Georgia.

H.R. 2303: Mr. ACKERMAN, Mr. TOWNS, Mr. FISH, and Mr. SABO.

H.R. 2333: Mr. GILLMOR.

H.R. 2361: Mr. SMITH of Oregon and Mr. CARR.

H.R. 2363: Mr. MACHTLEY and Mr. CRAMER.

H.R. 2369: Mr. JOHNSTON of Florida and Mr. DE LUGO.

H.R. 2439: Mr. LEWIS of Georgia.

H.R. 2463: Mr. Skeen, Mr. BAKER, Mr. TAYLOR of North Carolina, Mr. HANSEN, and Mr. AUCOIN.

H.R. 2470: Mr. EMERSON.

H.R. 2484: Mrs. JOHNSON of Connecticut and Mr. MCEWEN.

H.R. 2493: Mr. ZELIFF.

H.R. 2515: Mr. FEIGHAN, Mr. GALLO, Mr. MAVROULES, Mr. RIGGS, Mr. ZELIFF, Mr. ZIMMER, Mr. GUARINI, Mr. CRAMER, and Mr. SMITH of Florida.

H.R. 2553: Mr. SENSENBRENNER and Mr. MOORHEAD.

H.R. 2555: Mr. WEISS, Mr. BEILENSON, Mr. LAFALCE, Mr. FORD of Tennessee, Mrs. SCHROEDER, Mr. TOWNS, Mr. WHEAT, Mr. RANGEL, Mr. OWENS of Utah, Mr. OWENS of New York, Mr. HOCHBRUECKNER, and Mr. LEWIS of Georgia.

H.R. 2566: Mr. ECKART, Mr. PICKLE, Mr. STENHOLM, Mr. BUSTAMANTE, Mr. HUNTER, Ms. WATERS, Mr. LEWIS of California, Mr. PACKARD, Mr. BALLENGER, Mr. MOORHEAD, Mr. ROYBAL, Mr. DREIER of California, Mr. TORRES, Mr. LEHMAN of California, Mr. BRYANT, Mr. RHODES, Mr. HARRIS, Mr. CLEMENT, Mr. KOLBE, Mr. BLILEY, Mr. COBLE, Mr. DERRICK, Mr. BROWN, Mr. LIPINSKI, Mr. PRICE, Mr. BEVILL, Mr. CUNNINGHAM, Mr. DORNAN of California, Mr. DE LA GARZA, Mr. DANNEMEYER, and Mr. DYMALLY.

H.R. 2569: Mr. GREEN of New York, Mr. DANNEMEYER, and Mr. HERGER.

H.R. 2579: Mr. WISE.

H.R. 2584: Mr. STENHOLM.

H.R. 2587: Mrs. MEYERS of Kansas.

H.R. 2590: Mrs. JOHNSTON of Florida and Mr. LEWIS of Georgia.

H.R. 2603: Mr. SCHEUER.

H.R. 2629: Mr. BONIOR, Mr. ACKERMAN, Mr. JOHNSTON of Florida, Mr. TORRES, Mr. WALSH, and Mr. KILDEE.

H.R. 2634: Mr. WISE, Mr. TOWNS, Mr. FROST, Mrs. BYRON, Ms. SLAUGHTER of New York, and Mr. SWETT.

H.R. 2638: Mr. MILLER of Ohio.

H.R. 2646: Mr. DANNEMEYER.

H.R. 2689: Mr. GUNDERSON, Mr. RIGGS, Mr. LIPINSKI, Mr. KLUG, Mr. SOLOMON, and Mr. TAYLOR of North Carolina.

H.R. 2696: Mr. JONTZ.

H.R. 2715: Mr. OWENS of New York, Ms. NORTON, Mr. FROST, and Mr. SERRANO.

H.R. 2724: Ms. NORTON, Mr. LANCASTER, and Mr. DEFAZIO.

H.R. 2810: Mr. GUNDERSON, Mr. RINALDO, Mr. PAXON, Mr. BROOMFIELD, Mr. LOWERY of California, Mr. HYDE, and Mr. DE LUGO.

H.R. 2811: Mr. ALEXANDER, Mr. ANNUNZIO, Mr. DEFAZIO, Mr. EMERSON, Mr. HAYES of Louisiana, Mr. PAYNE of Virginia, Mr. PETRI, Mr. POSHARD, Mr. ROE, Mr. SANGMEISTER, and Mr. TRAFICANT.

H.R. 2819: Mr. JONTZ, Mr. POSHARD, Mr. SERRANO, Mr. BOUCHER, Mr. CHAPMAN, Mr. JENKINS, Mr. GUNDERSON, Mr. RAHALL, Mr. RANGEL, Mr. MARTINEZ, Mr. EVANS, Mr. WALSH, and Mr. WILLIAMS.

H.R. 2855: Mr. HAMILTON, Mr. PALLONE, Mr. TOWNS, Mr. KILDEE, Mr. HOCHBRUECKNER, Mr. MACHTLEY, Mr. BOUCHER, and Mr. JONTZ.

H.R. 2861: Mr. GUARINI.

H.J. Res. 95: Mr. LANTOS, Mr. SOLARZ, Mr. ZELIFF, Mr. STEARNS, Mr. BROWDER, and Mr. INHOFE.

H.J. Res. 178: Mrs. VUCANOVICH.

H.J. Res. 228: Mr. ROHRABACHER, Mr. LEHMAN of California, Mr. HALL of Ohio, Mr. STUDDS, Mr. MORRISON, Mr. LEWIS of Florida, Mr. DOOLEY, Mr. QUILLEN, and Mr. SHAW.

H.J. Res. 242: Mr. BRYANT, Mr. ASPIN, Mr. BREWSTER, Mr. BILBRAY, Mr. CARR, Mr. HALL of Ohio, Mr. HUBBARD, Mr. HUNTER, Mr. JEF-

FERSON, Mr. LIVINGSTON, Ms. LONG, Mr. KANJORSKI, Mr. MCMILLEN of Maryland, and Mr. EMERSON.

H.J. Res. 273: Mr. FROST, Mr. HARRIS, Mr. HORTON, Mr. MCNULTY, Mr. OWENS of Utah, Mr. TOWNS, Mr. HASTERT, Mr. RANGEL, Mr. MATSUI, and Mr. LANCASTER.

H.J. Res. 283: Mr. REGULA, Mr. WOLF, Mr. HORTON, Mr. EMERSON, Mr. GUARINI, Mr. LANCASTER, Mr. CLEMENT, Mr. LIPINSKI, and Mr. WALSH.

H.J. Res. 284: Mr. HUGHES, Mr. PAYNE of Virginia, Mr. SMITH of Florida, Mr. SKELTON, Mr. SPRATT, Mr. GORDON, Mr. HATCHER, Mr. ROSE, Mr. ESPY, Mr. MCMILLEN of Maryland, Mr. RAHALL, and Mr. FUSTER.

H. Con. Res. 3: Mr. SANTORUM.

H. Con. Res. 128: Mr. OWENS of Utah.

H. Con. Res. 172: Mr. LIPINSKI, Mr. MINETA, and Mrs. LOWEY of New York.

H. Res. 115: Mr. MFUME, Mr. LEWIS of Georgia, and Mr. ZELIFF.

H. Res. 139: Mr. GOSS, Mr. SCHEUER, Mr. GORDON, Mr. FROST, Mr. GALLEGLY, Mr. LENT, Mr. ESPY, Mr. BUSTAMANTE, Mr. RANGEL, Mr. ZELIFF, Mr. DOOLITTLE, and Mr. BROWDER.

H. Res. 167: Mr. CAMP, Mrs. LOWEY of New York, Mr. MCCANDLESS, Mr. WISE, and Mr. WALSH.

H. Res. 173: Mr. COMBEST.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1776

Mr. GEJDENSON of Connecticut:

—Page 26, after line 5, add at the end of the bill the following new section:

SEC. 27. SENSE OF THE CONGRESS RELATING TO THE ROLE OF THE COAST GUARD IN THE PERSIAN GULF CONFLICT.

(a) FINDINGS.—The Congress finds that—

(1) members of the Coast Guard played an important role in the Persian Gulf Conflict;

(2) 950 members of the Coast Guard Reserve were called to active duty during the Persian Gulf Conflict and participated in various activities, including vessel inspection, port safety and security, and supervision of loading and unloading hazardous military cargo;

(3) members of Coast Guard Law Enforcement Detachments led or directly participated in approximately 60 percent of the 600 vessel boardings in support of maritime interception operations in the Middle East;

(4) 10 Coast Guard Law Enforcement Teams were deployed for enforcement of United Nations sanctions during the Persian Gulf Conflict;

(5) over 300 men and women in the Coast Guard Vessel Inspection Program participated in the inspection of military sealift vessels and facilitated the efficient transportation of hazardous materials, munitions, and other supplies to the combat zone;

(6) members of the Coast Guard served in the Joint Information Bureau Combat Camera and Public Affairs staffs;

(7) approximately 550 members of the Coast Guard served in port security units in the Persian Gulf area, providing port security and waterside protection for ships unloading essential military cargo;

(8) the Coast Guard Environmental Response Program headed the international Interagency Oil Pollution Response Advisory Team for cleanup efforts relating to the massive oil spill off the coasts of Kuwait and Saudi Arabia;

(9) the Coast Guard Research and Development Center developed a deployable positioning system for the Explosive Ordinance Disposal Area Search Detachment, saving the detachment time and thousands of dollars, while also increasing the effectiveness and efficiency of the minesweeping and ordinance disposal operations in the Persian Gulf area; and

(10) Coast Guard units remain in the Persian Gulf area and continue to provide essential support including both port security and law enforcement.

(b) COMMENDATION.—The Congress commends the Coast Guard for the important role it played in the Persian Gulf Conflict and urges the people of the United States to recognize such role.